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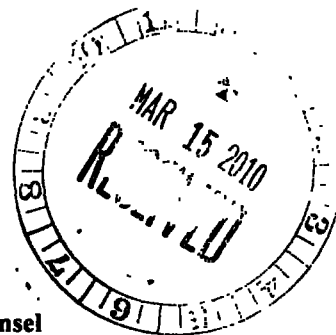
MAR 15 2010

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FILED

MAR 15 2010



Of Counsel
W. Patrick Quast
Charu Narang

March 12, 2010

SURFACE
Via Federal Express **TRANSPORTATION BOARD**

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423

FD 353 60

**RE: SAN FRANCISCO BAY RAILROAD – MARE ISLAND
PETITION FOR DECLARATORY ORDER – LENNAR
MARE ISLAND LLC, AND PURSUANT TO 49 U.S.C. §11123
AND 49 C.F.R. §1146.1 (b)(1)(i) FOR EXPEDITED RELIEF
DUE TO UNAUTHORIZED CESSATION OF OPERATIONS**

Dear Ms. Brown:

Enclosed please find the original and 13 copies of the captioned petition together with a CD containing this letter and the same material in PDF format.

Also enclosed please find my client's check for the filing fee which includes the \$1,400 for a Declaratory Order and \$250 for an emergency service order.

I would appreciate it if you would stamp the extra copies and return one to the undersigned and one to the railroad in the self addressed Federal Express envelopes enclosed.

Thank you for your attention to this matter.

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TRANSPORTATION BOARD**

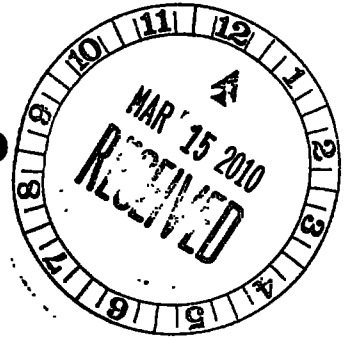
Very truly yours,

John F. McHugh

ORIGINAL

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FILED

MAR 15 2010

FINANCE DOCKET NO. 35360

**SURFACE
TRANSPORTATION BOARD**

**SAN FRANCISCO BAY RAILROAD – MARE ISLAND
PETITION FOR DECLARATORY ORDER – LENNAR MARE
ISLAND,**

**AND PURSUANT TO 49 U.S.C. §11123 AND 49 C.F.R. §1146.1
(b)(1)(i) FOR EXPEDITED RELIEF DUE TO UNAUTHORIZED
CESSATION OF OPERATIONS,**

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San Francisco Bay Railroad-Mare Island (hereinafter “Petitioner”)

is a rail carrier, which, pursuant to authority granted in FD-35304 on October 14, 2009, is operating common carrier rail service from Flosden Junction in Vallejo CA, to Mare Island, in Vallejo CA. As stated in Petitioner’s Notice of Exemption, this service was previously provided by the California Northern Railroad (hereinafter “CFNR”) on lands owned by the City of Vallejo, California and Lennar Mare Island, LLC (hereinafter “LMI”). The rights acquired by Petitioner from CFNR were transferred to CFNR via Parksierra Corporation from the Union Pacific Railroad, See: *CFNR Operating Company, Inc.--Acquisition And Operation Exemption--Parksierra Corp.* FD-34199, Filed May 23, 2002. Here, pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §721, Petitioner seeks a Declaratory Order that it is required to provide all service on

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this line which has been provided by the CFNR and its predecessors, and that it has the right to utilize all infrastructure required to do so, including that owned by non- carrier LMI on terms to be set by the Board. Petitioner also seeks a declaration that:

1. Pursuant to 49 U.S.C. §11102 that absent an agreement between LMI and Petitioner the Board may impose terms on LMI allowing Petitioner to operate common carrier rail service to shippers on about 2.5 miles of railroad located on land owned by LMI on Mare Island, Vallejo, California, which service has been provided by CFNR;

2. Granting Petitioner an Emergency Service Order pursuant to 49 CFR §1146 allowing Petitioner to service shippers on Mare Island utilizing tracks on LMI's lands until reasonable terms for such use can be negotiated with LMI or set by the Board.

THE LINE

The line in issue is that portion of the line from Flosden Junction in Vallejo, California, to the end of track on Mare Island in Vallejo, California that lies on lands owned by LMI, approximately 2.5 miles of track. There are no mileposts on this track. There are two branches on Mare Island, both serving the sidings of shippers, some owned by LMI, some owned by shippers.

Petitioner is owned by:

**David Gavrich
President
San Francisco Bay Railroad
100 Cargo Way @ Pier 96 Railyard
San Francisco, CA 94124**

Mr. Gavrich also owns San Francisco Bay Railroad and has been continued in control of the Petitioner pursuant to FD-35303-0 (October 14, 2009).

The Petitioner has invested more than \$100,000 to obtain the necessary operating authority, to do track repairs on this line, and to obtain and place a locomotive on the line to facilitate its operation. The Petitioner is financially able to provide the services here in issue, which requires the maintenance of the track and the payment of reasonable rent to the landowner. As Petitioner already operates the balance of the line not on LMI's property, the cost of providing service over LMI's property to the end of the line is minimal. Further, due to the size of its investment Petitioner has already made in this line it is clear that Petitioner intends to operate for the foreseeable future. (Attached hereto as Exhibit A is the declaration of David Gavrich).

The portion of the line in issue here will be operated by the Petitioner on an on-demand basis five days per week or more, as it currently operates the balance of the line. Petitioner has an interchange agreement with CFNR at Flosden Jct. in Vallejo, California.

Petitioner maintains:

- 1. General Liability Insurance: \$5,000,000;**
- 2. Automobile Liability Insurance: \$1,000,000;**
- 3. Worker's Compensation; Employer's Liability: \$1,000,000;**
- 4. Railroad Protective Liability: \$5,000,000;**
- 5. Contractor's Pollution: \$5,000,000;**
- 6. Professional Legal Liability Insurance: \$5,000,000;**

which policies currently name the City of Vallejo and LMI as additional named insureds with respect to liability arising from the operation of this line. (Attached hereto as Exhibit B is the certificate of insurance). Petitioner is ready, willing and able to immediately comply with any reasonable demands for coverage related to the proposed operation.

Service on the line in issue here can commence immediately upon the granting of the Emergency Service Order herein requested, as Petitioner has a locomotive on Mare Island, personnel in the area to conduct operations, and customers on Mare Island have requested rail car shipments.

HISTORY

Mare Island, in Vallejo California, was a United States Naval facility until 2002. In the mid-1990's the Navy was closing the base and was to sell the facility to the City for \$1.00. LMI's web site, states:

In 1997, the City of Vallejo, selected Lennar Mare Island, LLC as its master developer for the reuse of Mare Island. Lennar Mare Island draws directly from both the community development and the commercial real

estate expertise of its parent corporations Lennar Corporation, NYSE Lennar and the LNR Property Corp., NYSE LNR, respectively.

In March of 2002, 650 acres of the former Mare Island Naval Shipyard were transferred from the Navy to the City of Vallejo and then to Lennar Mare Island, LLC. The transfer represents the start of Lennar Mare Island's \$260 million redevelopment effort. It will create approximately 8,000 jobs, 7 million square feet of commercial space, 1,400 residential units and new recreational, open space and historical areas.

http://www.mareisland.org/lennar_profile.htm

In the sale to LMI, the City retained title to the rail line from Flosden Jct. to the Mare Island end of the Wichels Causeway which carries the rail line and G street, a city street, over the Mare Island Strait to Mare Island. (Attached hereto as Exhibit C is a Map of the Line on Mare Island).

According to Wikipedia, the free encyclopedia, Mare Island has been served by a line of railroad since 1905. The line that remains serviceable begins at Flosden Jct, within the City of Vallejo, California, where it interchanges with the CFNR. The line runs about 2.5 miles on the right-of-way currently owned by the City, and thence across Mare Island Strait on the Wichels Causeway. The line then enters Mare Island, which at one time contained 22 miles of railroad track. Today, after crossing the strait, the line runs down Railroad Avenue to A Street where there is a junction. One line of railroad turns west and north to run immediately next to Azuar Drive,

while the main track continues down the center of Railroad Avenue and is serviceable to the vicinity of 18th Street. Shippers on Azuar Drive generally own their facilities, including rail switches and track, while the shippers on Railroad Avenue generally lease their facilities from LMI. Other sidings reach buildings or facilities that are not currently occupied. As the attached map reflects, the track highlighted in yellow has been inspected by the Petitioner, is immediately serviceable and reaches the sidings of all of the known rail customers. (See exhibit C *supra*).

THE LINE IS A PART OF THE NATIONAL RAILROAD TRANSPORTATION SYSTEM

The line to Mare Island was originally operated by the San Francisco, Napa & Calistoga Railway. On September 20, 1920 the line was transferred to the Mare Island Freight Line Company. The line, while operated by the Freight Line, included both the trackage on Mare Island and a line of railroad which extended to Napa Junction. On August 15, 1956 Mare Island Freight Line Company was sold to the U.S. Government¹. At some point between 1956 and 1960 the Southern Pacific Railroad took over service to Mare Island, and the junction was installed at Flosden connecting the Mare Island Freight Line to the Southern Pacific line from Vallejo to Napa Jct.).

¹ http://en.wikipedia.org/wiki/Rail_transport_in_Solano_County,_California

In 1993 the line was leased to Parksierra Corp. which operated the line thereafter under its subsidiary, the CFNR. The Southern Pacific Railroad was acquired by the Union Pacific Railroad on August 12, 1996 (FD-32760).

On May 23, 2002, in *CFNR Operating Company, Inc.--Acquisition And Operation Exemption--Parksierra Corp.* (FD-34199), the Board authorized transfer of the line from Parksierra to the CFNR Operating Company.

The Verified Notice of Exemption filed by the CFNR Operating Company, Inc., on April 23, 2002, lists several lines as included in the transfer, including all branch lines appended thereto. The Notice includes a map on page 9 which shows the line to and through to the end of Mare Island as included in the authority sought. (Attached hereto as Exhibit D is the Notice of Exemption filed by CFNR).

When Mare Island was sold to LMI in 2002, the CFNR, under various owners, had been providing service for nine (9) years and was providing service to the Navy and to at least four non-Navy shippers. Steel fabricator XKT located onto Mare Island in 1995; ABC/Jeffco in 1996; Alco Iron and Metal in 1997; and North Pacific had been on Mare Island for 8 years before it left in 2007 (Attached hereto as Exhibits F, G, and H respectively).

Sometime in early 2008, LMI gave notice to all shippers on Mare Island that all rail service was to end on March 31, 2008 (E-mail from XKT to the City attached hereto as Exhibit I). The CFNR apparently received no requests for service from shippers on Mare Island from March, 2008 until Alstom Transportation Services, Inc. made such a request in mid-2009. CFNR's response to the request was to allow Petitioner to assume responsibility for providing service on the line, and Petitioner is here attempting to respond to such demands, but has been blocked by LMI as to all shippers but Alstom (Exhibit A, *supra*).

CONDITION OF THE RAILROAD

The Petitioner has inspected the rail on the main track leading to the Island. It consists of 136-lb. rail. It is largely welded rail in excellent condition and with little wear. The track is double-anchored on every other tie, and the ties are in good condition. On the Island the rail is 115 or 110-lb, also largely welded and in good condition. All switches work properly. The track is well surfaced, which is an indication that the substructure is in generally good condition, particularly where the track is installed within streets. The entire track required to reach each of the five previous shippers or receivers who remain on the Mare Island is immediately useable, or

useable with light repair, as is the track extending to a City-owned parcel at the north end of the Azuar Drive branch (Exhibit A, *supra*).

LMI's SUSPENSION OF SERVICE

There has been no service between Flosden Jct. and Mare Island since March 4, 2008 when LMI gave notice to all shippers that rail service was to end on March 31, 2008. There is no record of any demand for service having been made to the CFNR until mid-2009. At the time that LMI gave notice of termination of rail service, the line was serving five shippers: to wit: XKT Engineering, Inc. (Exhibit E *supra*); Alco Iron & Metal Co. (Exhibit F *supra*); Earthquake Protection Systems, Inc. (Exhibit I); Alamillo Rebar, Inc. (Exhibit J); and Latham Truss (now out of business). While two shippers may have ceased using the railroad partially or entirely for other reasons, the loss of rail service or the threatened loss of rail service caused North Pacific, a large building materials company, to relocate to a rail-served site off the Island (Exhibit G, *supra*). One major shipper ceased functioning due to a fire.

In mid-2009, the Petitioner was contacted by Alstom Transportation Services, Inc. (hereinafter "Alstom"), concerning availability of rail service. Alstom was installing a major rail car maintenance and repair facility in a building on Mare Island, adjacent to the Causeway. Alstom was seeking a rail

operator to provide it with service on the line, a basic requirement for its rail car business. CFNR had limited interest in this business and had no objection to Alstom's seeking another operator. As Alstom had rail car repair contracts in place, it urgently needed rail service, and solicited Petitioner to provide it in lieu of CFNR and with CFNR's approval. CFNR and Petitioner entered into a temporary car placement agreement in November, 2009, and subsequently signed a final interchange agreement in December, 2009.

Petitioner and Alstom met with LMI in September, 2009 with regard to restoring service on the entire line. Alstom's goal was to reduce its cost of obtaining a rail connection between its facility and the national rail system by generating sufficient traffic on a viable short line that served other shippers on Mare Island. The revenues from this traffic could then help maintain the line in the long-term (Exhibit A, *supra*). LMI had no objection to this plan, but viewed permanent rail service on Mare Island to be inconsistent with its long-term interests. LMI suggested that Alstom and Petitioner reach an agreement with the City of Vallejo for the use of the mainland track, and then notify LMI once such an agreement was in place (Exhibit A, *supra*)

The City was very receptive to restoration of rail service to and onto the Island, and entered into a short-term lease with the Petitioners to commence service (Attached hereto as Exhibit K). The City and Petitioner also agreed to the terms of a 20-year lease (Attached hereto as Exhibit L), which was tentatively scheduled for consideration of approval by the City Council on January 12, 2010 (Exhibit A, *supra*). The short-term lease was required due to Alstom's immediate need for service before the City Council could act on the long-term lease (Exhibit A ¶ 8). The short-term agreement has been extended to March 31, 2010. While the terms of a long-term lease have been agreed to with City of Vallejo staff, its approval has not been placed before the City Council due to objections from LMI, *id.* However, in the early fall, 2009 LMI had been receptive to Petitioner's and Alstom's proposal. (Refer to Exhibit M, a letter confirming the initial discussions).

On September 25, 2009, Petitioner dispatched a Notice of Exemption to the Board seeking authority to operate service on the Railroad extending from Flosden in Vallejo, California to and onto Mare Island to the end of track (See FD-35304). The Notice informed the Board that Petitioner was seeking to provide service previously provided by CFNR on tracks owned by the City and LMI. CFNR had received authority pursuant to FD-34199 *supra*. The Board granted Petitioner such authority on October 14, 2009.

The exemption anticipated completion of agreements with both the City and LMI. Petitioner commenced service to Alstom immediately and continues to the present to provide such service on demand.

After operating authority was granted, LMI refused to negotiate with the Petitioner, since Petitioner would not agree that the operation on Mare Island was a private spur on which LMI could terminate service at any time. (Exhibit A, *supra*) (Attached hereto as Exhibit N is LMI's refusal letter dated January 29, 2010). LMI now seeks to create its own in-house rail operation to serve shippers on Mare Island, but only if service is deemed by LMI to be viable. (Refer to Exhibit O, E-mail from Randolph Paterson).

LMI is a landowner that took control of land at a time when the tracks thereon were extensively used to provide common carrier services. The acquisition of an active or non-abandoned rail line by a non-carrier does not modify the common carrier status of the property acquired. See: *Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corp.* (FD-42087 filed July 27, 2005). Where, as here, a common carrier has the obligation to provide service over a line of railroad, a land owner has the obligation not to interfere with that service. *Orange County Transportation Authority, Riverside County Transportation Commission, San Bernardino Associated Governments, San Diego*

Metropolitan, Transit Development Board, North San Diego County Transit Development Board—Acquisition Exemption—The Atchison Topeka and Santa Fe Railway, Company (FD-32173, March 12, 1997).

PETITIONER SEEKS CONFIRMATION OF ITS IMMEDIATE AND LONG-TERM AUTHORITY TO PROVIDE SERVICE

Petitioner seeks a declaratory order that as the successor to the CFNR, it has the right and obligation to provide common carrier rail service on the tracks located on both LMI's property and to access other private rail-served property on Mare Island. As Petitioner has demands from a shipper on Mare Island for service now, it must seek the right to provide alternative service pursuant to 49 C.F.R. §§1146.1. and 1147.1 Petitioner meets the burden of proof therefore as follows:

49 CFR §§1144.1(b)(1)(i) and 1147.1 (b)(1)(i) both require proof that the Standards for the relief provided in these sections have been met²

Petitioner is the common carrier by railroad, authorized to provide service on the line at this time as a successor in interest to the CFNR. LMI has barred the Petitioner from crossing its lands on tracks required to reach and serve customers who are demanding that rail service to their facilities be

² The same standards also apply to an application for transfer of rights under 49 U.S.C. §10709, See: *Oregon International Port Of Coos Bay—Feeder Line Application— Coos Bay Line Of The Central Oregon & Pacific Railroad, Inc. supra.*

restored. LMI, after terminating service for two years, now seeks to create an in-house carrier to interchange with Petitioner at the Mare Island end of the causeway and to serve shippers with that temporary carrier. Where, as here, a line of railroad has been operated as a whole and single line, continued operation of the entire line should be by one entity. *Oregon International Port of Coos Bay-Feeder Line Application-Coos bay Line of the Central Oregon & Pacific Railroad, Inc.* FD-35160 (October 31, 2008).

LMI made it very clear to the Petitioner that it wants full control of rail services on its property, including service to shippers who own their own land and rail track next to LMI's parcel, with private spur tracks connecting to the national railway system via the track through LMI's lands. LMI's insistence on such control violates its obligations as a non-rail carrier land owner, *Orange County Transportation Authority, Riverside County Transportation Commission, San Bernardino Associated Governments, San Diego Metropolitan, Transit Development Board, North San Diego County Transit Development Board—Acquisition Exemption—The Atchison Topeka and Santa Fe Railway, Company* (FD-32173, March 12, 1997) (land owner has the obligation not to interfere with the provision of rail service over rail facilities on its lands).

While LMI was apparently able to control the service provided by CFNR, under LMI's "management" there was a substantial and measurable deterioration and inadequacy of rail service to shippers on Mare Island, as on March 4, 2008 all rail service was suspended as a result thereof. See: *City of Peoria and the Village of Peroia Heights, Il. Adverse Discontinuance-Pioneer Industrial Railway Company*, AB-878 (Nov. 16, 2007) (a substantial and measurable deterioration and inadequacy of service to one shipper, causing diversion of traffic to trucks, is sufficient to support an alternative service order).

LMI insists on the right to terminate service at any time. Any contract, such as a lease between parties, regarding provision of rail service is absolutely ineffective to the extent it allows the discontinuance of, or interference with rail service without Board's prior approval:

The authority of the Commission under s 5(2)(a) extends to fixing terms and conditions, including rentals for any trackage agreements entered into subsequent to the effective date of the Transportation Act of 1940. If, therefore, the two carriers had voluntarily terminated the 1904 trackage contract and had entered into a new one without the approval of the Commission, they would have violated the Act. There would be no difference in result merely because the trackage contract expired by its terms or was terminated by operation of an escape clause. Until abandonment is authorized, operations must continue.

Thompson v. Texas Mexican R. Co., 328 U.S. 134, 146-147 (1946).

Alco Iron and Metal moved to Mare Island in 1997, at which time rail service was provided by CFNR. When LMI acquired lands on the Island in 2002, it attempted to impose contractual terms allowing it to terminate rail service. However, LMI also assessed charges for access to railroad service via LMI's tracks, (Refer to Exhibit P, an e-mail from Earthquake Protection Service dated February 1, 2010). LMI caused rail service to end on Mare Island on March 4, 2008, prompting a complaint protesting termination of rail service. (Refer to Exhibit Q, e-mail to the City dated Jan. 10, 2008). That termination of service followed a significant increase in track use charges assessed by LMI, which rendered rail service impractical. (refer to Exhibit P *supra*)

In 2005, North Pacific, a major building materials operation, was located on Mare Island and utilized over 800 carloads that year. In a news report about the move to a location off Mare Island, North Pacific identified the uncertainties of continued rail service to be a major factor forcing it to relocate (See Exhibit G, *supra*).

Apparently, after LMI gave notice of termination of rail service as of March 31, 2008 no shipper demanded service of the CFNR. As previously reflected, complaints were made to the City of Vallejo in connection with the disruption and cessation of service.

Shippers on Mare Island have been damaged by the loss of rail service as follows:

1. Earthquake Protection Systems, Inc. shipped 2,700 tons between 2002 and 2005, and has found its costs significantly increased due to the suspension of rail service (Exhibit H, *supra*).

2. XKT Engineering Inc. had shipped 180 cars per year prior to the imposition of increase car charges by LMI, and one year shipped as many as 1,000 cars because of a major contract it was able to win. Since service terminated by LMI it has diverted 79 cars to a transload facility in American Canyon, CA incurring \$39,500 in transloading charges and \$70,000 for trucking. Each car which must be transloaded costs XKT \$1,450 over the cost of rail service directly to its facility on Mare Island. Moreover, it can not bid certain large steel projects which require rail deliveries (Exhibit E, *supra*).

3. Alamillo Rebar Inc. indicates that since rail service was terminated they have been required to divert 170 cars to American Canyon, adding \$125,100 in trucking charges and \$83,400 in transloading fees (Exhibit I, *supra*).

4. Alco Iron & Metal Company opened on Mare Island in 1997. Between 1998 and 2002, this company shipped 20-30 cars outbound per month and received about 8 inbound. From 2002, until service was

terminated in 2008, the company shipped 10-15 cars a year. The business has been negatively impacted by the loss of rail service (Exhibit F, *supra*).

5. As stated above, North Pacific, a building materials distributor, moved to an off-island location due, in major part, to the threatened loss of rail service. After moving from Mare Island, the company subsequently closed its doors and moved out of the Bay Area region (Exhibit G, *supra*).

All shippers remaining on the Island are now using trucks to move materials to and from their facilities, even though they have rail facilities at their plants. Trucking creates traffic on the Island, an effect contrary to the national policy of maintaining effective competition between rail and other modes of transportation, See *Roseburg Forest Products Co., Timber Products Company, L.P., Suburban Propane, L.P., Cowley D&L, Inc., Sousa AG Service, and Yreka Western Railroad Company-Alternative Service-Central Oregon & Pacific Railroad, Inc.* FD-35175 (Mar. 3, 2009), page 7-8, *Arkansas Midland Railroad Company-Alternative Rail Service-Line of Delta Southern Railroad, Inc.* FD-34479 (Mar. 11, 2004).

POTENTIAL FOR FUTURE SERVICE EXPANSION

Mare Island has a significant amount of industrial space with direct access to the rail infrastructure. This space includes the following industrial or warehouse spaces, which are currently listed as available on LMI's website:

<u>Building #/Use</u>	<u>Approximate Square Feet</u>	<u>Availability</u>
124/Industrial/Warehouse	2,100	Immediate
1326/Industrial/Warehouse	6,700	Immediate
670/Lt. Industrial/Warehouse	8,600	Available
77/Office/R&D/Lt. Industrial/Warehouse	40,000 (24,000 1st & 2 nd Floor)	Available
545/Mixed Use (Rodman)	71,379	Available
509/Office/R&D/Lt. Industrial/Warehouse	72,000 (Divisible)	Available
207/Office/R&D/Lt. Industrial/Warehouse	51,226 (26,755 Ground Floor)	Available
Yard	Flexible/TBD	Available
Berth	Flexible/TBD	Available
527/Office/R&D/Lt. Industrial/Warehouse	114,328	Available
483/Office/R&D/Lt. Industrial/Warehouse	360,000 (Divisible)	Available
690/Heavy Industrial	10,603	Available
112/Heavy Industrial	21,280	Available
118/Heavy Industrial	22,500 (2nd Floor)	Available
114/Heavy Industrial	38,877	Available
106/106A/Heavy Industrial	49,694	Available
1310/Heavy Industrial	105,600	Available

Therefore, there is significant potential for increased rail use if suitably priced,

See: Norfolk Southern Railway Company-Adverse Abandonment-St. Joseph County, IN AB-290 (Sub-No. 286) (August 26, 2008) at p. 4 (safeguarding the potential for a shipper to rethink the impractical and probably politically motivated, decision to move coal by truck rather than by rail). With the increased use of rail due to environmental concerns and cost, it is expected that properly priced rail service on Mare Island will attract additional businesses, economic development activity, and good paying jobs to an otherwise depressed area.

49 CFR §§1146 (b)(1)(ii) and 1147 (b)(1)(ii), Negotiations with LMI

In the fall of 2009, Petitioner sought to negotiate an agreement with LMI after having obtained an agreement with the City which set reasonable terms for Petitioner's use of the track on the mainland and on the causeway. At that time, Petitioner assured LMI of its ability to provide service and to fully comply with its common carrier obligations. Petitioner later memorialized its proposal, including listings of obligations to LMI (Exhibit M *supra*), and presenting LMI with a copy of the City agreement (Exhibit L, *supra*). In response, LMI presented Petitioner with its proposed agreement (attached hereto as Exhibit R). LMI's position is set forth in both the body of that proposed agreement as again in an Exhibit D thereto, as follows:

Disclosure of Temporary Nature of Railroad Operations. Licensee acknowledges that rail service at the Project may be discontinued or interrupted at any time, and specifically acknowledges receipt of the disclosure attached hereto as Exhibit D – Temporary Railroad Operations. Licensee hereby agrees that it shall fully disclose the temporary nature of rail service to Mare Island, and Licensee agrees that it shall, in advance of providing any service to a Mare Island business (each a “User”), enter into a written agreement with each such User. Prior to conducting active business with each such User, Licensee shall provide a written acknowledgement to LMI from such User indicating that such User has received a copy of Exhibit D.

That Exhibit D resolves any doubt about LMI’s intent to terminate service:

EXHIBIT D

**Temporary Railroad Operations
User Acknowledgement**

The undersigned Mare Island Business _____ [fill in the blank] , hereby acknowledges and Agrees:
San Francisco Bay Railroad (“SFBRR”), pursuant to a license agreement with Lennar Mare Island LLC (“LMI”), is authorized, on a temporary basis, to operate on a portion of Mare Island railroad track. The redevelopment will involve extensive reconstruction and rehabilitation of buildings, roadways, public facilities and improvements, all of which will produce noise, dust and inconvenience to Licensee (*e.g.*, road barricades). Temporary or permanent interruption of rail service to Mare Island is likely. The temporary or permanent closure of rail service to Mare Island shall not constitute a nuisance and shall not be a basis for abatement or reduction of the License Fee or be deemed a violation of the undersigned’s right to quiet enjoyment under their agreement with LMI or any other entity. The undersigned shall not be entitled to any compensation or damages for loss of, or interference with, Licensee’s business or use or access to the License Area resulting from the loss of rail service.
Advance notice of a temporary or permanent closure of rail service to Mare Island is not required.

SFBRR is fully responsible for all maintenance of the rail, switches and rail system components.

SFBRR is solely responsible for safety, liability and traffic control. SFBRR is required to operate in compliance with all applicable laws and regulations.

The undersigned hereby acknowledges that, notwithstanding the existence of rail facilities adjacent to and/or servicing Mare Island or the project now or in the future, LMI is under no obligation whatsoever to provide any rail service in the future.

Other terms of the agreement sought to limit the cargos the Petitioner could transport and to impose costs on the railroad at LMI's sole discretion, (Exhibit A, and R *supra*);).

When it became apparent that Petitioner intended to operate the line as a common carrier, subject to the jurisdiction of the Board, LMI refused to deal further with Petitioner (Exhibit N, *supra*). After Petitioner refused to comply with LMI's unlawful terms, LMI ostensibly proposed to provide rail service itself via an in-house non-common carrier operation. However, LMI had not actually agreed to provide service, merely to determine if service would be viable (Exhibit O, *supra*). Due to LMI's stated position and its past actions, it can be assumed that LMI will eventually terminate that service again if Petitioner is not permitted to substitute for CFNR as common carrier on Mare Island.

Indeed, *United States v. B. & O. R. Co.*, 333 U.S. 169, at pgs.173, 175-7 (1948), is a case directly on point. In that decision, the Supreme Court held that the Interstate Commerce Commission could forbid the non-carrier owner of a segment of track operated by an interstate rail carrier as part of its line from regulating the commodities the railroad transports over the line by charging the carrier an exorbitant amount for the use of the line. *Id.* at 176.

Here, LMI has insisted, in the proposed contract with Petitioner that it has the right to terminate service at any time. Such an agreement was deemed unlawful in *Southern Pacific Transp. Co.—Abandonment*, 9 I.C.C.2d 385, 387-388 (1993). In that matter the ICC cited the ability of a transit agency to curtail freight services as unlawful, as it denied shippers access to the Board to protest such loss of service, precisely what occurred herein when LMI terminated service in March, 2008. The Board has acted consistently in the past on petitions from shippers to prevent violations of the Act, and to protect the free flow of commerce. See ex. *PYCO Industries, Inc.—Feeder Line Application, et al.* STB Finance Docket No. 34890 Aug. 3, 2006, where the Board voided the sale of a short piece of railroad owned by the incumbent carrier that was subject of a feeder application by a shipper, where that transaction could frustrate the purposes of the statute (Slip op. at 6). Similarly, in *Railroad Ventures, Inc.—Acquisition and Operation*

Exemption—Youngstown & Southern Railroad Company, STB Finance Docket No. 33385 (STB served Oct. 4, 2000), aff'd, *Railroad Ventures, Inc. v. STB*, 299 F.3d 523, 561 (6th Cir. 2003), the Board voided a contract entered into by the abandoning railroad that would obstruct efforts by the entity acquiring the line through an offer of financial assistance to restore service.

The Board has repeatedly held that it has a “statutory duty to preserve and promote continued rail service.” *Western Stock Show Ass’n – Abandonment Exemption – in Denver, CO*, 1 S.T.B. 13 (1996). Elsewhere, the Board has ruled that it has a statutory duty to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. *See Modern Handcraft, Inc.-Abandonment*, 363 I.C.C. at 969, 972 (1981).

In the face of this precedent, allowing a land owner to impose a term on the provision of rail service which allows it to terminate that service at will, limit the service allowed and/or impose any costs on that service at will is unreasonable and is therefore unlawful under 49 U.S.C. 11101 (a). See *ex: Railroad Ventures, Inc.--Abandonment Exemption--Between Youngstown, Oh, And Darlington, Pa, In Mahoning And Columbiana Counties, Oh, And Beaver County, PA*, AB_556_2_X (October 4, 2000):

As for the fourth criterion, section 10904 represents a clear legislative determination that rail service should be preserved whenever there is an offeror willing to provide for continued service. The grade-separated crossing agreement here is clearly contrary to the public interest because it would impose a substantial obstacle (in fact, a "poison pill") to the resumption of rail service. RVI clearly had no intention to provide service on this line and thus no intention of paying for a grade-separated crossing, and the Township is adamantly opposed to the resumption of rail operations on this line. (41) Thus, the parties' attempt to bind any future rail operator to this highly unusual (42) and costly condition was obviously designed to effectively preclude future rail service, thus frustrating section 10904 of the statute. Accordingly, the stay request will be denied.

Accordingly, as LMI's terms contain the same type of "poison pill", they are unreasonable and therefore unlawful. The provision that limits Petitioner to temporary service over LMI's property, after LMI already terminated service for two years, should not be deemed an adequate response to shippers demands.

49 CFR §§1146.1 (b)(iii) and 1147.1(b)(iii) each require the availability of a rail carrier willing to provide the service.

SFBR-MI was brought to Mare Island by the City and by Alstom with the common goal of restoring common carrier rail service to Mare Island for the long-term future. SFBR-MI has obtained authority to operate this line as a common carrier by rail. It is committed to building traffic on the line in order to reduce the costs imposed on Alstom for the maintenance of the line, and to create a long-term profitable operation. Alstom is committed to assisting with those costs in a joint effort to make the line economically self-sustaining.

Petitioner recognizes that LMI is entitled to a fair price for allowing rail access over its lands, and to be held harmless from all costs related to the operation and maintenance of the railroad infrastructure on Mare Island. Petitioner is willing to pay a reasonable price for the use of the track and to commit to maintain the track (Exhibit M, *supra*).

(b)(iv) Attached hereto as Exhibit S is the Certificate of Service of this petition by Federal Express upon LMI and the City of Vallejo.

The Need for A Service Order and the recognition of an easement on LMI is fully justified by the facts.

As previously reflected, Petitioner has received requests for service from shippers on Mare Island and one demand for service. LMI has barred Petitioner from providing such service and now seeks to provide service with its in-house carrier to at least four (4) shippers, as well as to Jeffco/ABC, Cooper Crane and CS Marine (Attached hereto as Exhibit T are letters addressed to these four entitled announcing such service). Therefore, it would appear that there are at least seven (7) potential rail shippers currently interested in service from the tracks on LMI's property. In that letter, Exhibit T, LMI has indicated that service stopped in 2008 because it stopped subsidizing that service. Contrary to that representation, there is no record of LMI having subsidized service on Mare Island at any time. Indeed, as previously reflected, shippers paid LMI for access

to rail service (Exhibit P *supra*). Finally, the track left by the Navy is in such good condition that it appears to need very little, if any, significant work to make it operable (Exhibit A, *supra*).

Here, to date LMI has forbidden the use of the tracks in issue. See *Pyco Industries Inc- Feeder Line Application-Lines of South Plains Switching Ltd. Co.* FD-34890 (August 31, 2007) pg. 11 (actions blocking service justify continuation of an alternate service order and the transfer of the operation to another carrier).

Petitioner Has Satisfied All Of The Criteria Set By The Board To Justify Issuance Of An Emergency Service Order

In *Pyco, supra*, the Board stated that to find that the public convenience and necessity require or permit the relief here requested the Petitioner must establish that the five criteria set forth in 49 U.S.C. 10907(c)(1) are met:

(1) the rail carrier operating the line has refused to make the necessary efforts within a reasonable time to provide adequate service to shippers who transport traffic over the line;

(2) the transportation is inadequate for the majority of shippers who use the line;

(3) the transaction will not have a significantly adverse financial effect on the rail carrier operating it;

(4) the sale will not have an adverse effect on the overall operational performance of the rail carrier operating it; and

(5) the sale will likely result in improved rail transportation for shippers that use the line.

Criteria 1 and 2 as articulated by the Board in *Pyco, supra*. are satisfied. Service has been terminated since March, 2008, forcing five regular rail customers to resort to trucking from distant reload centers, or to resort to use of trucking for the entire trip, sometimes hundreds of miles. Therefore, service is inadequate for all customers on the line. Further, LMI will only restore service, which it can terminate at will:

Adequate rail transportation involves more than just picking up or delivering a specific shipment in a timely manner on a given day. It entails rail service that is reliable over the long-term so that shippers can prudently make contractual commitments that depend on future rail service for their fulfillment.

id pg. 12.

Criteria No. 3 as articulated in *Pyco, supra*, is met. The imposition of terms for the operation of the rail line on LMI land will have no negative effect on it. LMI is not a rail common carrier; it has expressed no desire to become a rail common carrier; and is not operating the rail line at this time, though it seeks to provide non-common carrier in-plant type service to avoid the common carrier service offered by Petitioner. Indeed, restoring service would benefit LMI. Rail service on the Island will render the Island more

attractive to shippers, and will therefore increase the likelihood that current occupants will stay and new industries will be attracted.

Criteria 4 as articulated in *Pyco, supra*, is met. The restoration of rail services on this line will not interfere with LMI's operation, as it has none.

Criteria 5 as articulated in *Pyco, supra*, is met. Where Petitioner seeks to restore rail service to shippers, where such service has been suspended for two years, it is unquestionable that such service will benefit past and future shippers.

Therefore, an Emergency Service Order should be issued, and should the parties not be able to agree on lawful and reasonable terms for the long-term use of the tracks within 30 days, the Board should impose terms.

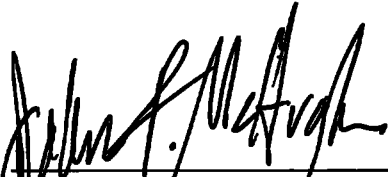
CONCLUSION

LMI is an intervening owner of land on which track dedicated to common carriage is located. It is preventing the common carrier, which has the obligation to provide service, from reaching shippers currently demanding service. The track connects with spurs of rail customers who were receiving common carrier rail service before LMI acquired the land, and who continue to be entitled to such service, which had been demanded upon CFNR, which has designated the Petitioner to provide that service.

1. Pursuant to 49 CFR §1146.1 and 49 U.S.C §11123 (a) Petitioner should be granted an Emergency Service order to service any shipper on Mare Island which seeks service and which can be accessed safely on serviceable existing trackage.

2. Pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721 the issuance of Declaratory Order establishing that Petitioner, as common carrier, has the right to provide service on the track and, absent an agreement between LMI and Petitioner, the Board will set the terms of that use.

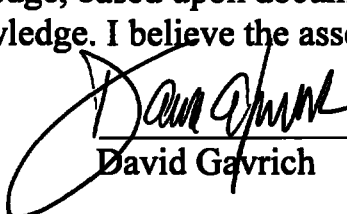
Dated, New York, N.Y.
March 11, 2010



John F. McHugh,
Attorney for the Petitioner, San
Francisco Bay Railroad-Mare Island
6 Water Street
New York, N.Y. 10004
212-483-0875

VERIFICATION

David Gavrich, the President of San Francisco Bay Railroad-Mare Island, declares under penalty of perjury pursuant to 28 U.S.C. §1746 that I have reviewed the petition attached hereto and the factual statements are true based upon my personal knowledge, based upon documents I have seen, and where I do not have direct knowledge. I believe the assertions are correct.



David Gavrich

Table of Exhibits

- Exhibit A - Declaration of David Gavrich**
- Exhibit B - SFBR-MI Certificates of insurance for LMI and City**
- Exhibit C - Map of the Line on Mare Island**
- Exhibit D - Notice of Exemption filed by CFNR**
- Exhibit E - XKT located to Mare Island in 1995**
- Exhibit F - Alco Iron and Metal located to Mare Island in 1997**
- Exhibit G - North Pacific located to Mare Island in 1999**
- Exhibit H - E-mail from XKT to City of Vallejo (January 10, 2008)**
- Exhibit I - Letter from Earthquake Protection Systems, Inc.**
- Exhibit J - Letter from Alamillo Rebar, Inc.**
- Exhibit K - City of Vallejo Short-Term Agreement w/SFBR-MI**
- Exhibit L - City of Vallejo Final Draft 20-Year Agreement w/SFBR-MI**
- Exhibit M - SFBR-MI Letter to LMI Confirming Initial Discussions**
- Exhibit N - LMI's Refusal To Allow Common Carrier Service**
- Exhibit O - E-mail from Randolph Peterson, T&O Railroad**
- Exhibit P - E-mail from Earthquake Protection Service (February 1, 2010)**
- Exhibit Q - E-mail to City of Vallejo**
- Exhibit R - LMI's Proposed Agreement w/SFBR-MI**
- Exhibit S - Affidavit of Service**
- Exhibit T - LMI Letters to Jeffco/ABC, Cooper Crane and CS Marine**

Exhibit A

Declaration of David Gavrich

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. _____

**SAN FRANCISCO BAY RAILROAD – MARE ISLAND
PETITION FOR DECLARATORY ORDER –
LENNAR MARE ISLAND,
AND PURSUANT TO 49 U.S.C. §11123 AND 49 C.F.R. §1146.1
(b)(1)(i) FOR EXPEDITED RELIEF DUE TO UNAUTHORIZED
CESSATION OF OPERATIONS**

DECLARATION OF DAVID GAVRICH

David Gavrich declares under penalty of perjury pursuant to 28 U.S.C. §1746 on this 12th day of March 2010, at San Francisco, California that the following is true to the best of my knowledge and if called to testify in this matter I would do so competently as to the following:

1. I am the President and sole shareholder of San Francisco Bay Railroad Company, which is duly authorized to operate a rail line in the City and County of San Francisco, FD-4915-00- P (January 8, 2001). I am also the President and sole shareholder of San Francisco Bay Railroad-Mare Island (hereinafter “SFBR-MI”), a railroad authorized to operate in the City of Vallejo, California based upon a Notice of Exemption approved on October

14, 2009 (FD-35304). I was authorized to continue in control on the same date (FD-35303), and as such I am familiar with the facts.

2. In late Spring, 2009, I was contacted by Alstom Transportation Services (hereinafter "Alstom"), a firm which was constructing a rail passenger car maintenance and rehabilitation facility on Mare Island in the City of Vallejo, California, which facility had a railroad spur serving it which is connected to a line of railroad which is connected to the Vallejo Branch of the California Northern Railroad (hereinafter "CFNR"). Alstom informed me that CFNR had limited interest in serving their facility, and had urged them to find their own operator to connect their facility to the junction at Flosden, about 2.5 miles from the new Alstom facility. Alstom believed that in addition to its already contracted traffic, beginning with 66 cars spread over two years, additional rail traffic could be generated in the future by both Alstom and from other businesses on Mare Island, which has significant heavy industry and an existing rail system.

3. My staff and I inspected the rail lines in issue and found that the lines consisted of 136-lb rail from Flosden Junction to and across the Mare Island Strait, on the G Street causeway. On Mare Island the lightest rail is 110-lb., and a significant amount of that line is within Railroad Avenue and A Street.

The line has good surface indicating that the understructure of the track is in good condition. All of the switches serving the various industrial type buildings in use on the Island are in good working condition and meet FRA standards. Therefore, the line consists of heavy track in good physical condition and is capable of handling any railcar in interchange service today. The line can be operated immediately with minimal spot repairs.

4. The only major issue is on the mainland side of the Strait, where there are eleven (11) grade crossings, each protected by electronic signals and gates, and eight (8) of which are out-of-service. Alstom has agreed to reimburse SFBR-MI for the cost of restoring those crossings to working order. We have entered into a two-year agreement with Alstom, we are providing service pursuant to that agreement, and we have already done substantial repair and maintenance work on that line. Pursuant to discussions with the FRA, we are currently flagging all out-of-service crossings until such time as we make the aforementioned signal repairs.

5. In the process of exploring our role on this rail line, in late summer 2009 we met with Craig Whittom, Assistant City Manager/Community Development of the City of Vallejo, and Ms. Claudia Quintana, Deputy City Attorney, both of whom were enthusiastic about the possibility of SFBR-MI restoring freight service to Mare Island. Mr. Whittom indicated that a restoration of rail service

would assist the City in attracting industry and new jobs to the Island. He further stated that CFNR had provided such service until March, 2008, at which time such service stopped; and that at least five companies on the Island had been using that service up until the time it was terminated.

6. On November 10, 2009, SFBR-MI and I were introduced at a public meeting of the Vallejo City Council. Mayor Osby Davis spoke on behalf of the City Council saying that the return of freight rail service to Mare Island and SFBR-MI's efforts to restore rail service were welcome reminders of the economic development and jobs-generating potential of the City of Vallejo.

7. We determined from discussions with companies on the Island which had used rail service in the past that the termination of service had not been due to abandonment or indeed due to any other formal action. Instead, shippers have informed us that service was simply stopped by Lennar Mare Island LLC.

(hereinafter "LMI"), the owner of land on Mare Island on which tracks are installed which lie between the end of the causeway, which is owned by the City, and the sidings serving many shippers' facilities, some of which are owned by the shippers and some of which are leased from LMI. We were informed that service was stopped because rail service conflicted with LMI's long-term development plans for the Island. These assertions were confirmed in meetings with and in

e-mails from Tom Sheaff, Vice President of LMI, where Mr. Sheaff stressed that LMI will only allow SFBR-MI to provide temporary rail service past Alstom on Mare Island, and that LMI prohibits SFBR-MI from serving rail customers on the Island unless and until SFBR-MI signs an agreement with LMI that confirms that rail service will be temporary only. In a meeting with Mr. Sheaff in mid-September, 2009, attended by representatives of both SFBR-MI and Alstom, and in written correspondence from Mr. Sheaff dated November 23, 2010; November 24, 2010; December 7, 2010; December 15, 2010; and December 16, 2010, Mr. Sheaff reiterated LMI's position that until SFBR-MI agrees to LMI's terms, including temporary rail service only, LMI prohibits SFBR-MI from crossing LMI's lands to provide rail service to rail shippers on Mare Island.

8. Alstom had a need for service on relatively short notice due to its passenger rail car repair contract with the California Department of Transportation.

Consequently, at Alstom's urging, both the City and I moved quickly to seek to accommodate that need. I agreed to form the San Francisco Bay Railroad-Mare Island and to seek operating authority from the Surface Transportation Board. I subsequently did so by dispatching a Notice of Exemption to the Board in late September, 2009. Before filing that Notice I approached the CFNR, which not only had no objection to our filing, but also were happy to allow us to serve the branch and generate traffic on the line. CFNR holds a

lease on the line from the Union Pacific Railroad. See *CFNR Operating Company, Inc.--Acquisition And Operation Exemption--Parksierra Corp.* (FD-34199 filed May 22, 2002). CFNR succeeded to the rights of Parksierra Corp. under a lease from the Union Pacific Railroad, covering lines described and all branches, including “(c) the Vallejo Branch, between milepost 61.80 at Napa Jct., and milepost 68.90 at Vallejo.” The Notice of Exemption filed by CFNR includes a map, which clearly shows the branch from Vallejo to and through Mare Island to be part of the lease rights transferred from Parksierra to CFNR (Exhibit D). Therefore, our Notice of Exemption was to take over the service that the CFNR was obligated to provide.

9. In December, 2009, LMI informed us that it objected to our Exemption as we had asserted that our operating authority extended onto Mare Island. Our Notice of Exemption stated that the line in issue was physically owned by the City of Vallejo and by LMI. In our initial discussions with LMI in mid-September, 2009, before the Exemption was filed, they had not objected to rail service on Mare Island, but they did make it clear then and on several occasions thereafter that they deemed such service to be temporary, and that they would demand the right to terminate service at any time they wished. However, our Notice was directed at acquiring CFNR’s rights and obligations, whatever they were. The record is clear that the railroad has

been in place since not later than the First World War (See *Southern Pacific Co. v. U.S.* 62 Ct.Cl. 649, 1926 WL 2625 Ct.Cl.,1926). It was operated by the Navy from 1957 to 1985, and then by the Southern Pacific, which leased it to Parksierra. In 1993, the California Northern Railroad took over and provided service as the common carrier. A common carrier cannot be subject to a landowner's desire to terminate service, thus our Notice of Exemption could not and did not include any such right.

10. By the date we commenced service to Alstom in early November, 2009 we had a short-term agreement with the City and by mid-December, 2009, we had negotiated a more formal short-term agreement with the City (Exhibit K), as well as a long-term agreement (Exhibit L). We subsequently presented that long-term agreement to LMI for its consideration as to the terms to apply to the use over its land. Instead, LMI submitted its own agreement, (Exhibit R). LMI's agreement would:

1.) allow LMI to terminate service at will (See ¶ 5(a) on page 2 and Exhibit D page D-1);

2.) allow LMI to restrict the type of cargoes we can handle (¶ 16 page 11); and

3.) allow LMI to impose fees for the use of the line in any amount at any time (id 5(d) page 3 c § 6 (b)).

11. Since early December, 2009, we have tried to explain to LMI that once a rail line serves two patrons it is a line of railroad and it is not a private spur. This rail line was serving at least 7 customers when the Navy lands on Mare Island were transferred via the City to LMI in 2002¹. By March, 2008, when LMI unilaterally terminated rail service, five shippers were still using the line according to letters we have received from four of them (Exhibits E, F, I, J, and Exhibit G, an article I found in the trade press concerning North Pacific, a building materials company which was a heavy user of rail and which left Mare Island in 2007 due to the expected termination of rail service). We understand that since SFBR-MI delivered its first cars to Alstom in early November, 2009, seven companies on Mare Island have requested that regular rail service be restored, but only XKT Engineering, Inc. has informed us of specific cars in transit which it wanted placed on its siding on Mare Island (i.e. a demand for service). Therefore, we attempted to explain to LMI that this service is rail common carriage and that such service cannot be terminated without the approval of the Surface Transportation Board.

12. We have also attempted to explain to LMI that a common carrier does not have the right to refuse any cargo offered to it if it is properly prepared for shipment under applicable regulations. We further tried to explain that if

¹ See, http://www.mareisland.org/lennar_profile.htm.

persons on the Island are prohibited from handling such materials in their leases or sales contracts with LMI, then that is an avenue for LMI to restrict “undesirable cargo” from being transported onto or off of the Island. Thus, LMI could control that aspect of the carriage lawfully by contract with a rail shipper tenant. However, the railroad cannot refuse to handle such cargos.

13. We have also attempted to explain to LMI that a railroad cannot agree to financial terms for the use of a right-of-way that gives the landowner the right to impose a burden on the service at the landowner’s sole discretion, which would render it financially prohibitive to provide service, a tactic which we are informed that LMI used before March, 2008 to reduce rail use on the Island.

14. Despite this information, and apparently with the advice of counsel, LMI persisted in its demands. Our disagreements center around LMI’s insistence that this be operated as a plant switching service, which service can be terminated by LMI at-will, and around LMI’s refusal to enter into a land-use agreement to allow SFBR-MI to serve customers on Mare Island other than Alstom (see Exhibit N). Further, LMI has forbidden SFBR-MI to operate beyond Alstom’s facility on Mare Island, and has threatened SFBR-MI with trespassing charges if it does so. We have tried to mediate these issues through joint meetings with the City, and through the STB’s informal mediation

process, but we have been unsuccessful getting LMI to compromise on the two fundamental issues: (1) that Mare Island has historically and continues today to have multiple rail shippers with common carrier service; and (2) that rail service on Mare Island needs to be long-term and reliable so shippers can count on it, and that LMI can not have the right to terminate that service at will.

15. SFBR-MI has now invested more than \$100,000 in this line of railroad. We have obtained a locomotive and moved it onto the line. We have filed the Notice of Exemption and have negotiated a long-term track use agreement with the City of Vallejo. That long-term lease was tentatively scheduled for consideration by the Vallejo City Council in early January, 2010, until LMI raised objections to it being brought before the Council. We have been providing on-demand service to Alstom as a common carrier since STB authority was received in late October, 2009. We have an interchange agreement with CFNR, and we have obtained full insurance coverage for the operation, including covering LMI and the City (Exhibit B). Therefore, we are providing service as far as we can on the line. We are dedicated to providing such service on the entire line for the long-term future, and we have the financial ability to do so. However, we are currently prohibited by LMI from providing that service. That prohibition has financially hurt SFBR-MI, negatively impacted Alstom, who

would benefit from shared use of the line, and it has hurt rail shippers on Mare Island by forcing them to utilize transloading and trucking when they could otherwise use direct rail to their facilities.

16. Therefore, SFBR-MI is in place on this line of railroad and is providing on-demand service today as far as Alstom. SFBR-MI is ready, willing and able to provide on-demand service to any and all shippers on Mare Island who have sidings that are still connected to the serviceable line of railroad that remains in place. SFBR-MI is willing to pay a reasonable fee to LMI for the use of the track in issue, and to be fully responsible for the maintenance of that track and for any improvements that are required to meet requirements imposed under Federal Railroad Administration regulations. Our commitment is to operate this service unless and until the Surface Transportation Board enters an order relieving SFBR-MI, its licensor and rail carrier lessors from the obligation to provide this service.

17. In contrast to our commitment to provide sustainable rail service on Mare Island, on February 18, 2010 we received an inquiry from Randolph Peterson, Manager of LMI's proposed in-house temporary railroad, as to our terms for handling Mare Island cars between Flosden and an interchange track on Mare Island to connect LMI's proposed on-island service to the national network. He


indicates that our providing this information will allow him to “better evaluate the economic viability for utilizing rail on Mare Island” (Exhibit O).

SFBR-MI has assumed the service obligation of CFNR, an obligation that continues until the Surface Transportation Board relieves SFBR-MI, the CFNR and the Union Pacific of their successive current and residual common carrier obligations to maintain this service. From all that has been seen to date, LMI has no intention of providing sustainable and reliable long-term rail service, and is simply interfering with the operation of this line.

18. I am advised by counsel that some of the factual assertions made in support of this Petition are not now supported with admissible evidence.

I know these facts as I have been told about them by reliable sources, and I have also been told that supporting documentation exists and is in the custody of LMI, or is contained in agreements that include confidentiality clauses. Petitioner will need discovery to fill these gaps should the Board require such evidence in order to make its decision. The Emergency Service Order is needed to meet shippers’ demands while this matter is pending.

Location Signed: San Francisco, California
Date Signed: March 12, 2010



David Gavrich, President
San Francisco Bay Railroad

Exhibit B

SFBR-MI Certificates of insurance for LMI and City



CERTIFICATE OF LIABILITY INSURANCE

OP ID JP
SANFRB1

DATE (MM/DD/YYYY)

01/22/10

PRODUCER United Shortline Insurance Services, Inc. 8265 North Van Dyke Port Austin MI 48467 Phone: 989-738-6400 Fax: 989-738-6557		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED San Francisco Bay Railroad San Francisco Bay Railroad- Mare Island, Inc. 100 Cargo Way @ Pier 96 Railyard San Francisco CA 94124		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A National Interstate Insurance	32620
		INSURER B	
		INSURER C	
		INSURER D	
		INSURER E	

COVERAGES


THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY	RRL6710004-00	10/22/09	10/22/10	EACH OCCURRENCE	\$ 5,000,000
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
	<input checked="" type="checkbox"/> CLAIMS MADE	<input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$
	<input checked="" type="checkbox"/> RR Liability					PERSONAL & ADV INJURY	\$ 5,000,000
						GENERAL AGGREGATE	\$ 10,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER				PRODUCTS - COMP/OP AGG	\$ 5,000,000
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input type="checkbox"/> HIRED AUTOS					
		<input type="checkbox"/> NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY AGG	\$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
							\$
		<input type="checkbox"/> DEDUCTIBLE					\$
		RETENTION \$					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS	OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)				E L EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				E L DISEASE - EA EMPLOYEE	\$
						E L DISEASE - POLICY LIMIT	\$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The following certificate holder is an additional insured but only with respect to liability arising out of the operation of the named insured.

CERTIFICATE HOLDER

LENNARM Lennar Mare Island, LLC Lennar Corp. & Kennedy Wilson Properties 690 Walnut Ave Suite 100 Mare Island, Vallejo CA 94592	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
---	---

ACORD. CERTIFICATE OF LIABILITY INSURANCE		OP ID JP SANFRB1	DATE (MM/DD/YYYY) 10/01/09
PRODUCER United Shortline Insurance Services, Inc. 8265 North Van Dyke Port Austin MI 48467 Phone: 989-738-6400 Fax: 989-738-6557		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED		INSURERS AFFORDING COVERAGE	NAIC #
San Francisco Bay Railroad 100 Cargo Way 4 Pier 96 Railway San Francisco CA 94124		INSURER A: US Rail Insurance Co, Inc. RHO	12923
		INSURER B: Lloyds of London - Reinsurer	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR MODL LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A B	GENERAL LIABILITY	USRI417037 07 USRI417037 07	10/22/08 10/22/08	10/22/09 10/22/09	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person) \$
	<input checked="" type="checkbox"/> RR Liability				PERSONAL & ADV INJURY \$ 5,000,000
	<input checked="" type="checkbox"/> RR Liability				GENERAL AGGREGATE \$ 10,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMPROP AGG \$ 5,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOG				
A A	AUTOMOBILE LIABILITY	USRI417037 07 USRI417037 07	10/22/08 10/22/08	10/22/09 10/22/09	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS				
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
	EXCESS/UMBRELLA LIABILITY				AGG \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE \$
	<input type="checkbox"/> DEDUCTIBLE				AGGREGATE \$
	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$
	OTHER				E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
The City of Vallejo, its officers, officials, employees, agents and volunteers are additional insureds but only with respect to liability arising out of the operations of the named insured.

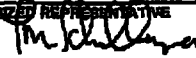
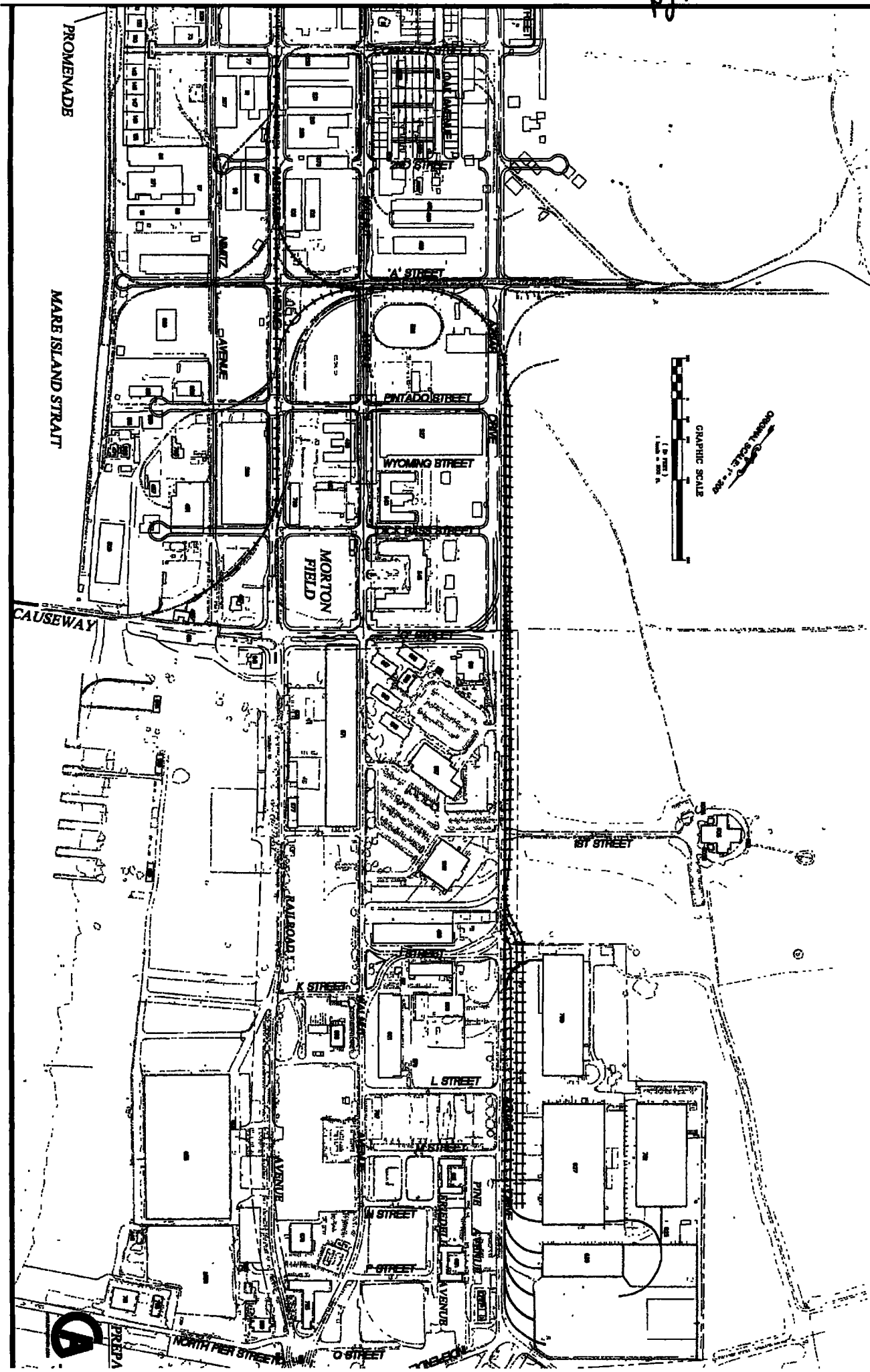
CERTIFICATE HOLDER	CANCELLATION
CITYOFV City of Vallejo 555 Santa Clara St. Vallejo CA 94590	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 

Exhibit C

Map of the Line on Mare Island



PROMENADE

MARE ISLAND STRAIT

CAUSEWAY

MORTON FIELD

PINTADO STREET

WYOMING STREET

BT STREET

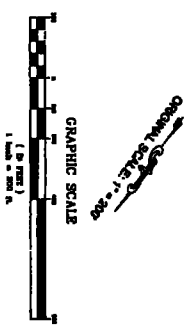
L STREET

M STREET

P STREET

NORTH PIER STREET

O STREET



MARE ISLAND STRAIT

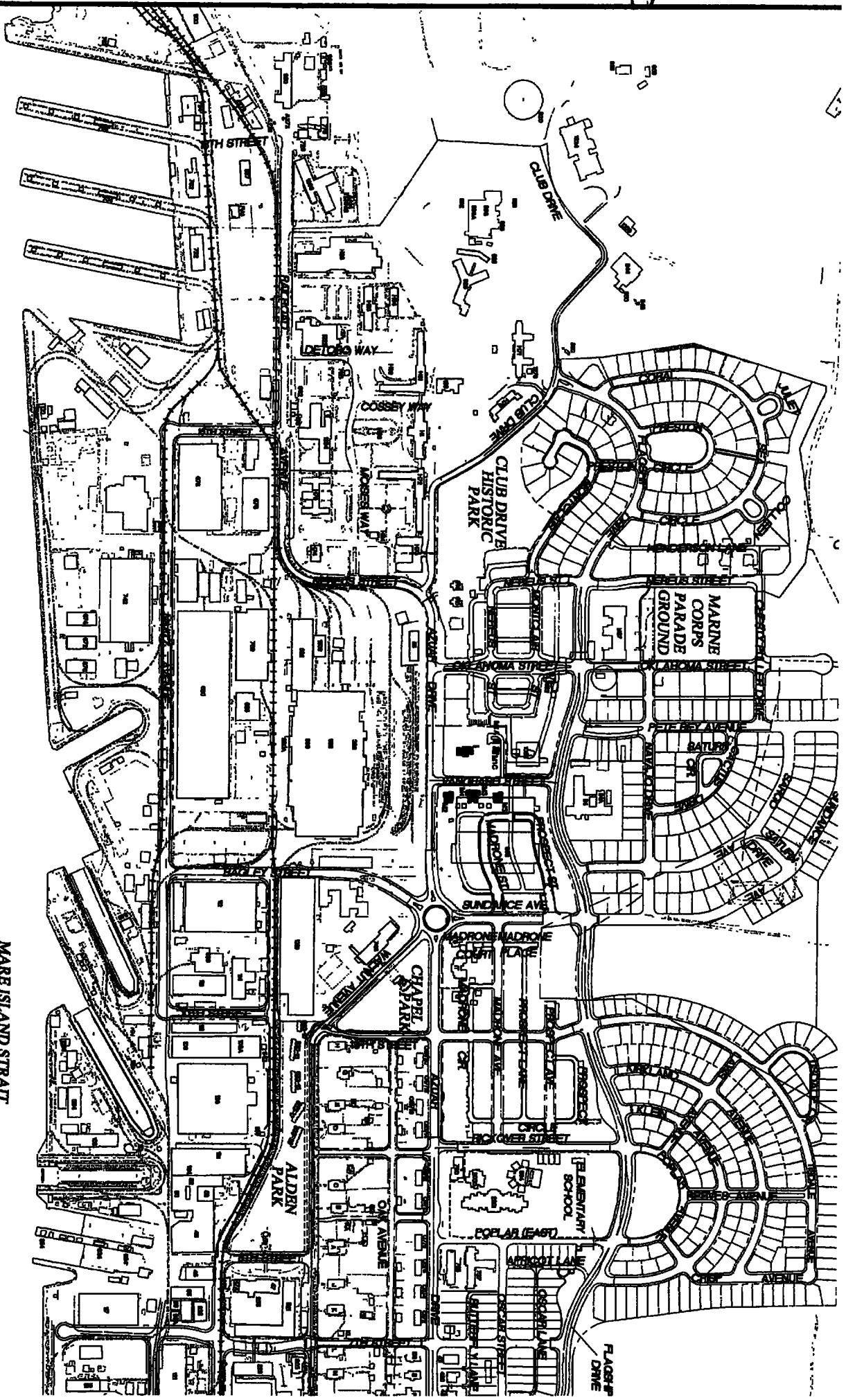


Exhibit D

Notice of Exemption filed by CFNR

ORIGINAL



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34199

CFNR OPERATING COMPANY, INC.—ACQUISITION AND OPERATION EXEMPTION—
PARKSIERRA CORP.

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.31, Et Seq.

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
CFNR Operating Company, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
CFNR Operating Company, Inc.

Dated: April 23, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34199



CFNR OPERATING COMPANY, INC.—ACQUISITION AND OPERATION EXEMPTION—
PARKSIERRA CORP.

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.31, *Et Seq.*

CFNR Operating Company, Inc. ("CFNR"), a noncarrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D — Exempt Transactions, with the Surface Transportation Board (the "STB"): (1) to permit CFNR to succeed to ParkSierra's lease rights and operate the following lines in California that are owned by Union Pacific Railroad Company ("UP"): (i) the Schellville Branch between Suisun, milepost 48.97 at the east leg of the wye and milepost 48.93 at the west leg of the wye, and Lombard, milepost 63.40; (ii) the Napa Branch between Lombard, milepost 62.00, and Rocktram, milepost 67.50; (iii) the Vallejo Branch between Napa Jct., milepost 61.80, and Vallejo, milepost 68.90; (iv) the West Valley Line between Davis, milepost 75.66 at the east leg of the wye and milepost 75.58 at the west leg of the wye, and Tehama, milepost 186.37 at the east leg of the wye toward Portland, and milepost 186.33 at the west leg of the wye toward Roseville; (v) the Hamilton Branch between Wyo, milepost 180.40, and Hamilton, milepost 169.00; (vi) the Los Banos Branch between Tracy, milepost 83.00, and Los Banos, milepost 140.07; and (vii) the Vineburg Lead between near

Schellville, milepost NWP 40.38, and the end of the line, formerly NWP milepost 44.25, a distance of about 210 miles; and (2) to permit CFNR to acquire ParkSierra's right to operate under trackage rights from: (i) UP in California over: (a) a portion of the Sacramento Line between Davis, milepost 75.4, and Suisun-Fairfield, milepost 47.8; (b) a portion of the West Valley Line at Davis between mileposts 75.58 and 75.4; and (c) a portion of the Schellville Branch between mileposts 48.97 and 47.8, a total distance of about 28 miles; and (ii) the North Coast Railroad Authority in California from milepost 62.0, at or near Lombard, to milepost 72.5, near Schellville, a distance of 10.5 miles (the "Lines").

In support of this Notice of Exemption, CFNR submits the following information as required by 49 C.F.R. § 1150.33:

a. Full name and address of applicant:

CFNR Operating Company, Inc.
129 Klamath Court
American Canyon, CA 94589

b. Applicant's Representatives:

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
CFNR Operating Company, Inc.
5300 Broken Sound Boulevard N.W.
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esq.
Of Counsel
Ball Janik LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

- c. An agreement has been reached among CFNR, as buyer, and ParkSierra Corp., as seller.
- d. The operator of the property will be CFNR.
- c. Summary of proposed transaction:

- 1. The name and address of the railroad transferring the property is:

ParkSierra Corp.
221 Gateway Road West, Suite 401
Napa, CA 94558

- 2. The proposed time schedule for the consummation of the transaction is April 30, 2002, or the date the concurrently filed waiver request is granted, whichever is later.

- 3. The mile-posts of the subject property, including any branch lines: (1) to permit CFNR to succeed to ParkSierra's lease rights and operate the following lines in California that are owned by UP: (i) the Schellville Branch between Suisun, milepost 48.97 at the east leg of the wye and milepost 48.93 at the west leg of the wye, and Lombard, milepost 63.40; (ii) the Napa Branch between Lombard, milepost 62.00, and Rocktram, milepost 67.50; (iii) the Vallejo Branch between Napa Jct., milepost 61.80, and Vallejo, milepost 68.90; (iv) the West Valley Line between Davis, milepost 75.66 at the east leg of the wye and milepost 75.58 at the west leg of the wye, and Tehama, milepost 186.37 at the east leg of the wye toward Portland, and milepost 186.33 at the west leg of the wye toward Roseville; (v) the Hamilton Branch between Wyo, milepost 180.40, and Hamilton, milepost 169.00; (vi) the Los Banos Branch between Tracy, milepost 83.00, and Los Banos, milepost 140.07; and (vii) the Vineburg Lead between near Schellville, milepost NWP 40.38, and the end of the line, formerly NWP milepost 44.25; and (2) to permit CFNR to acquire ParkSierra's right to operate under trackage rights from: (i) UP in

California over: (a) a portion of the Sacramento Line between Davis, milepost 75.4, and Suisun-Fairfield, milepost 47.8; (b) a portion of the West Valley Line at Davis between mileposts 75.58 and 75.4; and (c) a portion of the Schellville Branch between mileposts 48.97 and 47.8; and (ii) the North Coast Railroad Authority in California from milepost 62.0, at or near Lombard, to milepost 72.5, near Schellville.

4. CFNR is acquiring the lease from UP and operating about 210 route miles and operating over trackage rights for about 38.5 miles.

f. A map of the rail Lines is attached as Exhibit A.

g. A Certificate of Compliance with the provisions of 49 CFR § 1150.33(g) is attached as Exhibit B.

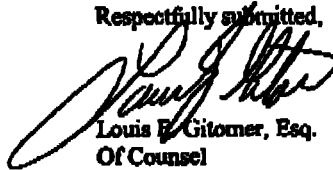
h. A caption summary, as required by 49 C.F.R. §1150.34, is attached as Exhibit C.

i. No environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR §1105.7(e)(4) or (5) and there will be no action that would normally require environmental documentation. Hence, this Notice of Exemption does not require environmental documentation under 49 CFR §1105.6(b)(4) and (e)(2)(i).

j. An historic report is not required because CFNR will operate the Lines, will require further STB approval as required to discontinue and abandon any service, and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. §1105.8(b)(1).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,



Louis B. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
CFNR Operating Company, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Attorneys for:
CFNR Operating Company, Inc.

Dated: April 23, 2002

EXHIBIT A - MAP

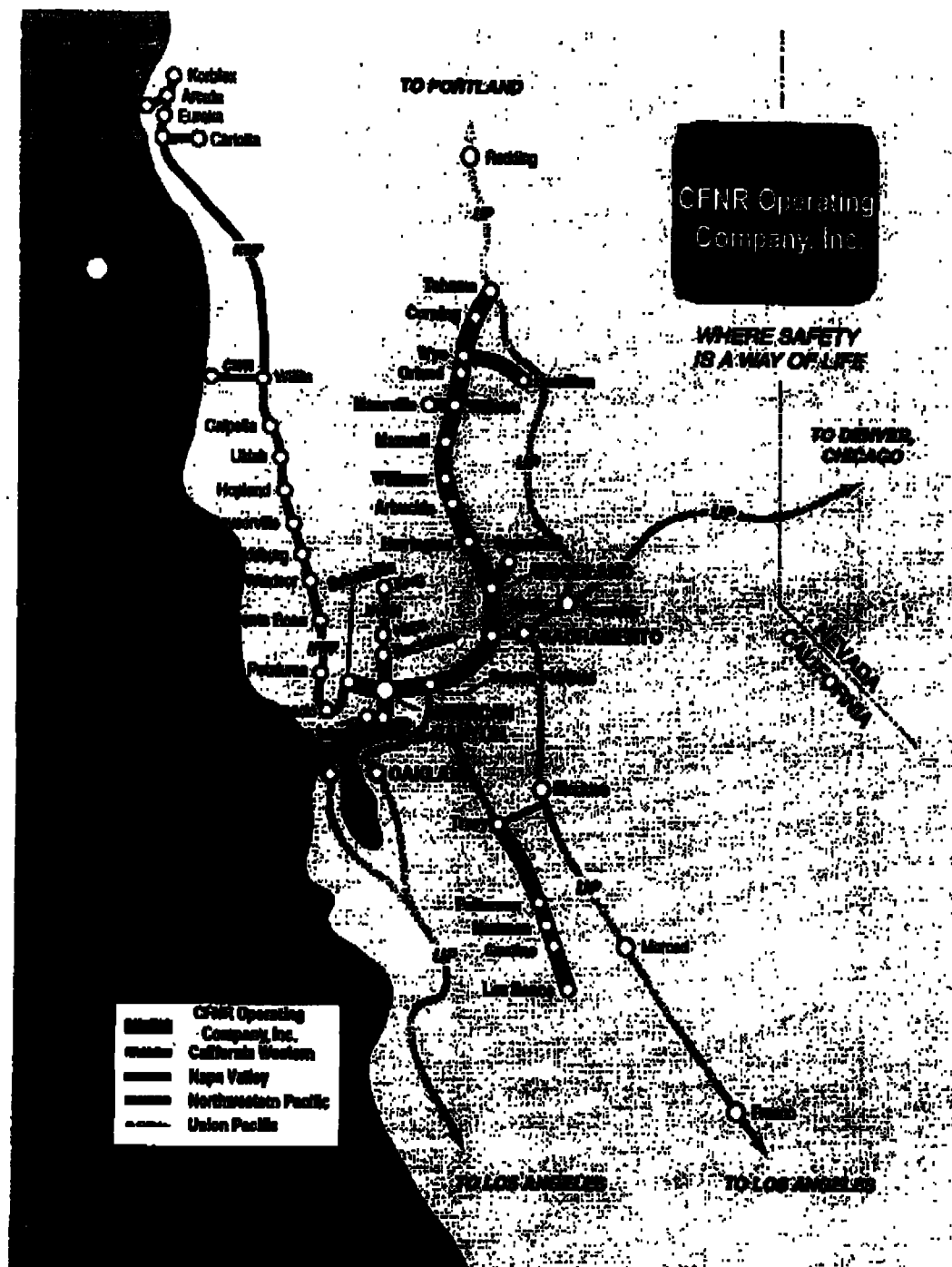


EXHIBIT B

EXHIBIT B

CERTIFICATION

State of Florida)
) ss:
County of Palm Beach)

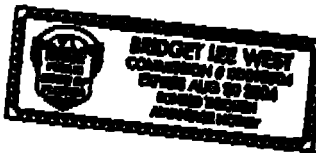
I, Walter S. Zorkers, being duly sworn depose and state that I am Senior Vice President Strategic Planning of CFNR Operating Company, Inc., and that the projected annual revenues from the rail operations would not exceed those that would make it a Class III carrier under 49 CFR Part 1201(1-1).

Walter S. Zorkers
Walter S. Zorkers

Subscribed and sworn to before me this 1st day of ^{April} ~~March~~, 2002.

[Signature]
Notary Public

(SEAL)



My Commission Expires: 8/20/04

EXHIBIT C – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 34199

**CFNR OPERATING COMPANY, INC.—ACQUISITION AND OPERATION EXEMPTION—
PARKSIERRA CORP.**

CFNR Operating Company, Inc. has filed a notice of exemption: (1) to permit CFNR to succeed to ParkSierra's lease rights and operate the following lines in California that are owned by UP: (i) the Schellville Branch between Sulsum, milepost 48.97 at the east leg of the wye and milepost 48.93 at the west leg of the wye, and Lombard, milepost 63.40; (ii) the Napa Branch between Lombard, milepost 62.00, and Rocktram, milepost 67.50; (iii) the Vallejo Branch between Napa Jct., milepost 61.80, and Vallejo, milepost 68.90; (iv) the West Valley Line between Davis, milepost 75.66 at the east leg of the wye and milepost 75.58 at the west leg of the wye, and Tehama, milepost 186.37 at the east leg of the wye toward Portland, and milepost 186.33 at the west leg of the wye toward Roseville; (v) the Hamilton Branch between Wyo, milepost 180.40, and Hamilton, milepost 169.00; (vi) the Los Banos Branch between Tracy, milepost 83.00, and Los Banos, milepost 140.07; and (vii) the Vineburg Lead between near Schellville, milepost NWP 40.38, and the end of the line, formerly NWP milepost 44.25, a distance of about 210 miles; and (2) to permit CFNR to acquire ParkSierra's right to operate

under trackage rights from: (i) UP in California over: (a) a portion of the Sacramento Line between Davis, milepost 75.4, and Suisun-Fairfield, milepost 47.8; (b) a portion of the West Valley Line at Davis between mileposts 75.58 and 75.4; and (c) a portion of the Schellville Branch between mileposts 48.97 and 47.8, a distance of about 28 miles; and (ii) the North Coast Railroad Authority in California from milepost 62.0, at or near Lombard, to milepost 72.5, near Schellville, a distance of about 10.5 miles.

The transaction is scheduled to take place on or as soon as possible after the April 30, 2002 effective date of the exemption.

A class exemption for RailAmerica to continue in control of CFNR Operating Company, Inc., was concurrently filed in Finance Docket No. 34197, *RailAmerica, Inc., Et Al.—Corporate Family Reorganization Exemption*.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34199, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Esq., Vice President Regulatory Counsel, CFNR Operating Company, Inc., 5300 Broken Sound Boulevard N.W., Boca Raton, FL 33487, (561) 994-6015, and Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, D.C. 20005, (202) 638-3307.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

VERIFICATION

State of Florida)
) ss:
County of Palm Beach)

I, Walter S. Zorkers, being duly sworn depose and state that I am Senior Vice President Strategic Planning of CFNR Operating Company, Inc., that I am authorized to make this verification, and that I have read the foregoing notice of exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Walter S. Zorkers
Walter S. Zorkers

Subscribed and sworn to before me this 18th April day of March, 2002.

Bridget Lee West
Notary Public



(SEAL)

My Commission Expires: 8/20/04

Exhibit E

XKT located to Mare Island in 1995



December 2, 2009

**San Francisco Bay Railroad
100 Cargo Way @ Pier 96 Railyard
San Francisco, Ca 94124**

Subject: Rail Service on Mare Island/Vallejo, CA

Attn: Jacob Park

Mr. Park:

XKT has been on Mare Island since 1995 when we signed a 15-year lease which included rail service. Needless to say, we came to depend on the rail service to receive our steel plate for many of the projects we have done over the past 14 years. We started using the rail service in 1996, but as of March 4, 2008 our rail service has been eliminated. The elimination of rail service has added an increased financial burden on our company over the past year. This directly affects our bidding process in that we have to add in these extra costs at bid time thereby decreasing profits and working capital. Further, XKT has not received official written notice stating that the rail line has been abandoned.

Last year we had 79 rail cars delivered to the Lombard Transloading site in American Canyon resulting in \$39,500 in charges for transloading onto trucks and \$70,000 for trucking. Presently we have two more rail cars on their way which will cost us an additional \$1,450 to transload and transport to Mare Island.

We demand that rail service be reinstated on Mare Island to help us to provide local jobs and for us to continue as a profitable business. In these tough economic times, any cost savings adds to the health and value of our company.

Sincerely

**Gary Mathison
General Manager**

CC: Lennar

CC: City of Vallejo, Annette Taylor

Exhibit F

Alco Iron and Metal located to Mare Island in 1997



Main Office
1091 Doolittle Drive
San Leandro, CA 94577
Ph: 510-562-1107
Fax: 510-562-1354

Mare Island Division
321 Azuar Drive
Vallejo, CA 94592
Ph: 707-562-1107
Fax: 707-562-2531

Stockton Division
2201 W. Washington
Port Road ??
Stockton, CA 95203
Ph: 209-939-9310
Fax: 209-939-9311

www.alcometals.com

December 4, 2009

Jacob Park
San Francisco Bay Railroad
100 Cargo Way
Pier 96 Rail Yard
San Francisco, CA 94124

Re: Rail Service to Alco Iron & Metal Co.

In 1997 Alco Iron & Metal Co. made a decision to open a new branch on the former Mare Island Shipyard. The site offered access by rail for delivery of steel inventory and shipment of scrap materials to our customers. The cost of shipment by rail would greatly reduce the cost of transportation expense for our company. We could see major growth in our business with the facilities available to us at this site. From 1998 to 2002 Alco Iron & Metal Co. shipped approximately 20 to 30 railcars a month from our Mare Island site and received approximately 8 railcars per year of new materials from various steel mills from around the country. During the years of 2002 - 2008 we averaged 10-15 cars per year delivering steel inventory to our site.

The elimination of our railroad service has greatly increased our cost of doing business. All of our rail shipments must now be unloaded at a transloading facility and then loaded onto trucks for final shipment. Future expansion of all phases of our business has been impacted because of the lack of rail service.

Sincerely,

Kevin M. Kantor
Executive Vice President

alco iron & metal co.

Exhibit G

North Pacific located to Mare Island in 1999

PYRO-GUARD

Interior Fire Retardant Treated Lumber and Plywood

**EXTERIOR FIRE-X**

Exterior Fire Retardant Treated Lumber and Plywood

**HOOVER**

TREATED WOOD PRODUCTS INC.

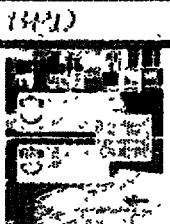
Sales: 800-531-5558

Support 800-TEC-WOOD (832-9663)

Web: www.frtw.comSeminars: www.learnaboutfrtw.com

BUILDING-PRODUCTS.com

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Emerging Trends

North Pacific bulks up in California

NORTH Pacific, one of the nation's largest building material distributors, has been expanding two of their three regional facilities in California to meet the demands of the growing pro dealer market. Both the Northern and Southern California distribution centers have recently moved to accommodate more inventory and product lines. They expect to expand even further in the future, providing a full line of building materials used for framing through to finishing of a construction project. For over eight years, the Northern California distribution center of North Pacific was located on Mare Island, a landmark in the San Francisco Bay Area. Formerly a naval shipyard and base, Mare Island was converted into a commercial and residential zone and has recently expanded residential area use. Serious railroad issues, tight yard conditions, and limited expansion ability pushed Steve Fischer, general manager of Northern California distribution, and his team to search elsewhere. The search proved to be challenging, but they found 15 acres of pavement with 55,000 sq. ft. of enclosed warehouse space and three long rail spurs, just 20 minutes away from their current location and in the heart of the Napa Valley region. "We've had to double our yard size to handle all the various product lines we carry for our customers," said Fischer. "The additional space allows us to handle numerous trucks simultaneously." Since the move to Napa a month ago, will call orders have grown significantly, primarily due to the ability to get trucks in and out quickly. But keeping the team together was the real reason Fischer chose to remain in the area. "Our sales staff has an average of 20-plus years experience in the building materials industry and our yard team is a group of professionals, able to deliver what our customers want, including custom EWP job-lot packages. The whole team is critical to our operation, and we weren't going to move unless we kept that team together," added Fischer. In the last five years, the center has grown from 10 daily truck deliveries to between 30 and 40 trucks per day. Additionally, three 26-ft. North Pacific-owned trucks were added to handle local deliveries throughout the heavy urban traffic areas within the Bay Area. Business has also grown dramatically in the central valley and coastal regions, resulting in the opening of a 5-acre satellite yard in Madera, just north of Fresno. North Pacific's Northern California operations carry a full line of engineered wood products, including their own branded NPI-Joist and LVL as well as Rosboro's glulam and Big Beam product lines. They also offer specialty brand lines like James Hardie, GP Dens Gold, Miratec, Arauco, and Huber AdvanTech, along with structural panel products from Canfor, Grant, Hardel and Panel Products. New products continue to be added, such as Rosboro's 1.8E IJC glulam. Portland, Or.-based North Pacific has continuously been developing strong relationships with suppliers. "North Pacific has been a very nice partnership for our company. They continue to raise their service position to allow James Hardie product lines to be more accessible in Northern California," said Brian Short, South-west regional sales manager for James Hardie. "They have also restructured their facility to take

Retailer News

Wholesalers/
Manufacturers

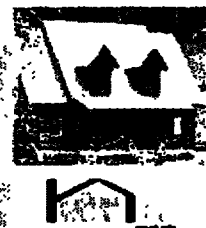
New Products

Emerging Trends

Industry Events

LBM Buyers Guide

**Complete
Drained Roof**



**Hardwood
Products
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ADVANTAGE





on our ColorPlus product line in this market. This product line will be a key initiative for us within the market." The expansion allows for more service options. "Service is the real reason our customers choose to do business with us," said Fischer. "Our services include mixed trucks, job site deliveries, take-offs, product selection assistance, layouts and project submittals, delivery sequencing, and more." In North Pacific's Southern California DC, general manager Curtis Noteboom and his team recently faced the moving challenge, as well, while also refocusing their current industrial business to include servicing the LBM pro dealers. Their previous facility in Rancho Cucamonga did not support the space requirements for the additional product lines (lumber, OSB, plywood and EWP), so it was time to relocate. Just nine miles away in Mira Loma, a 135,000-sq. ft. warehouse with a 7-acre yard on two rail spurs became available-perfect for their current and future inventory requirements and for the existing operational requirements of their laminating operations. "This operation was established as an industrial distributor and laminate manufacturer, through our Tri-State Laminating Company. Adding building materials compliments our existing product line," said Noteboom. Since the yard opened, 15 to 20 trucks have been going out daily to meet the demand in the Southern California region, which stretches north to Bakersfield and east to Las Vegas. "We're excited and ready to deliver panel products and other building materials to the Southern California pro-dealer market," he added. Current commodity offerings in Southern California include OSB, plywood, radiant barrier panels, MDO, dimension lumber, green and KD studs, boards, SPF fascia, roofing and Hoover fire-retardant treated panels. Industrial products such as MDF, particleboard, hardboard, and domestic and imported hardwood plywood as well as custom laminate products round out the mix. "We are working with a number of top-rate suppliers to bring in a wide range of building materials," commented Noteboom. "EWP products will be brought in by Q4 this year, which will complete our pro-dealer package offering." Miguel Hernandez, a 31-year commodity sales veteran in Southern California, heads the commodity sales team. "We have a strong team with many years of experience to service our customers, especially with Miguel in charge," says Noteboom. "We already offer next-day delivery within our service area as well as mixed trucks, and we're ready to take on other customized programs to help service our dealers." North Pacific also operates a Central California distribution center in Madera. All three locations are more functional and large enough to accommodate the company's long-term needs. Gregg Wilkinson, senior v.p. of building materials-West, is pleased with the progress. "These moves provide the leverage needed to put a strong California strategy in place," he says. "We are continuously expanding our product offerings and services to meet the demands of the pro-dealer market in California. With the leadership of our Northern Californian engineering staff, all three locations will offer EWP products and services by the end of the year. Our goal is to provide pro dealers with full service distribution packages throughout the state of California." North Pacific is one of the largest wholesale distributors of building materials, industrial wood products and other specialty products in the United States with annual sales of over \$1.2 billion. Privately-held and employee-owned, North Pacific is headquartered in Portland, Oregon with offices and distribution centers strategically-located throughout the United States.

[View All Emerging Trends](#)

Exhibit H

E-mail from XKT to City of Vallejo

Original Message -----

From: Alfred Bottini

To: mayor@ci.vallejo.ca.us ; ischivley@ci.vallejo.ca.us ;
sgomes@ci.vallejo.ca.us ; ehannigan@ci.vallejo.ca.us ; hsunga@ci.vallejo.ca.us
; tbartee@ci.vallejo.ca.us ; mwilson@ci.vallejo.ca.us

Cc: wchihak@inrproperty.com

Sent: Thursday, January 10, 2008 4:40 PM

Subject: Rail service on Mare Island

Mr. Mayor and Members of the Vallejo City Council,

We have received notice that Lennar Mare Island will terminate railroad service to Mare Island on March 31, 2008. Between 60 and 1,000 rail cars loaded with steel plate and beams have been delivered by rail each year since we relocated to Mare Island in 1995. Recently, rail access allowed us to team up with Ameron International in Southern California to provide 60,000 tons of steel piles for the New San Francisco Oakland Bay Bridge Skyway. The project lasted two years and provided over \$8,000,000 in payroll to 120 XKT employees and the purchase of over \$6,000,000 in steel plate and services from businesses located in Vallejo and on the west coast. Without rail access between the two plants, neither XKT nor Ameron could have participated and the pile would have been provided by offshore fabricators.

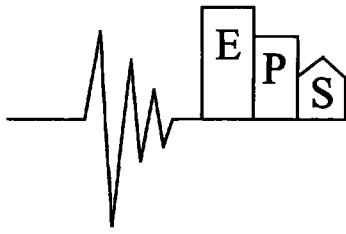
XKT Engineering was recruited by the city as the first tenant on Mare Island with the goal of economic development and job creation. The tools we were offered by the city to accomplish this were the facility we occupy and the access to rail and barge transportation. With these tools we have grown our business and provided steady employment for over 12 years. Without rail access, our raw material will have to ship to Richmond or Sacramento, be transloaded to trucks with oversize loads and then transported to Mare Island. It takes a minimum of four truckloads to transport the equivalent weight of one rail car. This will affect traffic, pollution, noise and fuel consumption, and it will put us at a disadvantage with our competitors who are all out of state or offshore.

An upgraded rail system will ensure continued economic development. Please hold firm in your commitment to develop Mare Island to its fullest capabilities.

Sincerely,
Alfred Bottini
President
XKT Engineering, Inc.

Exhibit I

Letter from Earthquake Protection Systems, Inc.



Earthquake Protection Systems, Inc.

451 Azuar Drive, Bldg 759, Mare Island, Vallejo, California 94592
Tel. (707) 644-5993 Fax (707) 644-5995

December 8, 2009

Mr. Jake Park
San Francisco Bay Railroad
100 Cargo Way
Pier 96 Rail Yard
San Francisco, CA 94124

Re: Rail Service to Mare Island

Dear Mr. Park,

Earthquake Protection Systems is a manufacturer located on Mare Island, Vallejo. Our main facility, Building 759, has direct rail access, which made it very attractive to us when we relocated our business here. From July 2002 to July 2005, our company shipped over 2,700 tons via rail from our suppliers in Texas. We found that the cost of shipping by rail was considerably less than by road transportation.

We are pleased to see rail service return to Mare Island. However, before we commit to resuming rail shipments from our suppliers, we need assurance from SFBR that this service is long-term.

Sincerely,

Julie Robinson, CFO

Exhibit J

Letter from Alamillo Rebar, Inc.



November 30, 2009

San Francisco Bay Railroad
Attn: David Gavrich
100 Cargo Way @ Pier 96 Railyard
San Francisco. CA 94124

RE: Rail Service to Mare Island, Vallejo, CA

Dear Mr. Gavrich,

Our company is located on Mare Island in Vallejo, and has observed the installation and improvements of the incoming rail tracks. We would like to take this opportunity to encourage you to once again provide rail service to Mare Island.

We have had 170 rail cars brought into American Canyon, which is the closest rail spur to our facility, in the last 12 months. The material has to be unloaded from the railcars and then loaded onto trailers to be trucked into our facility. This process has added expenses of \$125,100 in freight costs and \$83,400 in Transport Depot fees.

If rail service was once again available on the island it would provide a much needed cost savings of \$208,500 to us in these very difficult economic times that we are all experiencing.

We would appreciate any and all consideration in this matter. I am sure there are others on the Island that could benefit from your services as well as other businesses that would be attracted to the Island.

Sincerely,

Joe Alamillo
Vice President

Exhibit K

City of Vallejo Short-Term Agreement w/SFBR-MI

RAIL AGREEMENT
By and Between
THE CITY OF VALLEJO
AND
SAN FRANCISCO BAY RAILROAD

THIS RAIL AGREEMENT is made and entered into as of October 9, 2009 by and between San Francisco Bay Railroad a Delaware Corporation ("Railroad") and the City of Vallejo, a municipal corporation ("City").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE I.
GRANT OF RIGHT TO USE AND OPERATE CITY TRACK.

- A. The City desires the continuous use, inspection, maintenance and operation by Railroad of approximately 2.5 miles of City-owned track ("City Track") of varying width, beginning on or near "G" Street in Mare Island and continuing across the Wichels Causeway "Causeway"(contained within Parcel XXI-A as indicated in the U.S. Dept of Navy's Finding Of Suitability to Transfer (FOST)), turning northward, proceeding along roughly paralleling Couch Street until it meets up with a second set of tracks (currently owned by another entity) in the vicinity of the Flosden Yard near El Sendero Ct. City Track is partially contained on City property within Zone 19 (Railroad Spur) as shown in Figure 1 attached to this Agreement. There is a structure within Zone 19, a 95 year old steel bridge (Sacramento Street Overpass) "Bridge" which spans the railroad spur at Sacramento Street and Farragut Avenue. Zone 19 is located in the City of Vallejo and is bounded by commercial and residential parcels to the east and west; to the north by the Southern Pacific Railroad Right-of-Way and to the south by Tennessee Street and Wilson Avenue junction as shown on Figure 1("City Track") to service Mare Island businesses, tenants and residents. Accordingly, City, in consideration of the stated conditions and agreements in this Rail Agreement, hereby grants permission to Railroad to carry on the uses and obligations described in this Rail Agreement on City Track. The parties acknowledge that the relationship created hereby is that of a licensor granting Railroad a privilege to perform the activities permitted hereunder upon City property. This Rail Agreement conveys to Railroad a nonexclusive right to possession or use of the City Track and an exclusive right to be the only railroad to operate on City Track and is non-assignable.

Pursuant to this Rail Agreement Railroad shall be the City's exclusive track operator and shall use City Track for the following purposes only: delivery, storage and handling of railcars for Alstom, LSE, and industry located on Mare Island which require movement over City Track. This agreement will continue in force until January 1, 2010 or until the Surface Transportation Board shall approve the operation of this line by a common carrier and a successor agreement is signed, whichever is sooner. This shall be deemed a spur line until that approval is obtained.

- B. If applicable, Railroad must prioritize movement of cargo by rail that has a prior or subsequent movement by water to arrive in or leave from Mare Island. City and Mare Island businesses and tenants, including without limitation, terminal operators, and Railroad will use best efforts to jointly schedule freight movement logistics to ensure such priority. Railroad shall not receive any credit, abatement or any other form of consideration and City shall not be liable in damages or otherwise for any loss or interruption of Railroad's business due to such prioritization. Railroad's failure to comply with this requirement shall, at City's discretion, be deemed an event of default of the Rail Agreement.
- C. Railroad, as appropriate, will endeavor to pick up and deliver cars to the California Northern Railroad at the Flosden switching yard. Any agreement between Railroad and California Northern shall be subject to City's prior written approval. Nothing in any City agreement with the California Northern Railroad Company shall prevent Railroad's exclusive operating rights on City Track.
- D. City and Railroad, as appropriate, will enter into agreements to coordinate and facilitate the use of City Track with the movement of vessels under and through the Mare Island Bridge at Wichels Causeway and to minimize impact on pedestrian and vehicular traffic, especially at the Mare Island Bridge, consistent with any applicable traffic plan.
- E. Railroad shall use the City Track solely for the activities authorized in this Rail Agreement and for no other purpose. Any other use in, on or around the City Track or waste, nuisance or unreasonable annoyance to City, its licensees, tenants, or the owners or occupants or adjacent properties, interference with City's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic). Railroad shall not:
1. set out, pick up or store equipment upon the City Track, or any part thereof except with respect to its subcontractors in connection with shortline operations,
 2. permit or admit any third party to use all or any portion of the City Track;
 3. except in compliance with Article IX, make any Major Capital Repair or Improvement (as defined below);
 4. except with City's prior written approval, build into or out from any facility from or to the City Track;
 5. except with City's prior written approval, connect with or interchange with any other railroad other than the California Northern Railroad as such interchange agreement exists on the commencement date of this Rail Agreement from or to the City Track.

ARTICLE II. OWNERSHIP OF THE TRACK.

The City possesses and shall continue to possess certain ownership interests in all portions of the City Track over which the Railroad shall operate but makes no representation to Railroad regarding to investigate and determine the sufficiency and suitability of the Title for any purpose. It shall be the responsibility of Railroad to determine the state of the title ownership to

City Track to Railroad's satisfaction prior to conducting activity thereon. City makes no representations as to the state of its title on Railroad Tracks, and this Railroad Agreement does not grant Railroad any right to operate on any track that is not City Track.

ARTICLE III. RIGHT OF WAY AND PRIVILEGE.

Railroad shall obtain any needed right-of-way, public authority or permission for construction, maintenance and operation on the City Track including those approvals and permissions required by City agencies, boards and commission, such as the City's Planning Commission, by any railroad company and any other affected entity.

ARTICLE IV. TERM.

This Rail Agreement shall take effect on October 9, 2009 and shall continue in full force and effect until January 1, 2010 or the Surface Transportation Board authorizes the common carrier operation on the City Track and a successor agreement is signed whichever is sooner. .

ARTICLE V. CONDITION OF CITY TRACK.

Railroad acknowledges and agrees that it is familiar with the City Track, the City Track is being accepted in its "as is" condition, without any improvements or alterations by City, without representation or warranty of any kind, and subject to all applicable Laws governing use of the City Track. Railroad acknowledges that utilities, fiber optic cables and other facilities may exist beneath the City Track. Railroad represents and warrants to City that prior to the expiration of the first year of the term of this Agreement, Railroad will cause an inspection of the condition of City Track "City Railroad Track Inspection", relating to the condition of the substructure and/or structure of City Track. Railroad further represents and warrants to City that Railroad has investigated and inspected, either independently or through agents of Railroad's own choosing, the condition of the City Track and the suitability of the City Track for Railroad's business and intended use. Railroad acknowledges and agrees that neither City nor any of its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the City Track (including, but not limited to the substructure), the present or future suitability of the City Track for Railroad's business, or any other matter whatsoever relating to the City Track, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Neither party to this Rail Agreement shall have any obligation to construct any new trackage or any betterments or enhancements of existing City Track.

ARTICLE VI. COOPERATION OF PARTIES.

With input from City, Railroad, at its sole cost and expense, will assist City in marketing the City's rail capabilities to City's current and potential maritime customers and tenants and

shall serve as the City's liaison with the California Northern Railroad Company and with federal and state regulatory agencies related solely to day-to-day and routine operations. City will continue to represent itself with respect to strategic planning and overall rail operations. In no case shall Railroad be authorized to speak on behalf of City.

ARTICLE VII. USE FEE AND WHARFAGE.

Railroad will pay \$1 as a use fee for each year this Agreement is in place. City retains the right to negotiate a lease agreement with Railroad with respect to any City-owned property related to City track. City retains the right to enact, at a future time, any wharfage charges which may become applicable for any transfer of railcars or bins from one carrier to another. City retains the right to enact, at a future time City Railcar and Bin Fees.

ARTICLE VIII.

ARTICLE IX. MAINTENANCE OF CITY TRACK.

A. Railroad's Inspection, Maintenance and Repair Obligations. Railroad shall immediately undertake and cause to be completed a "City Railroad Track Inspection" by a mutually agreed on qualified inspector who shall produce a report, setting forth the current condition of the track, together with any deficiencies, recommendations to correct deficiencies and any maintenance plan, which report shall be available to City and to Railroad as soon as practicable, but in no event later than one year from the execution of this Rail Agreement. At all times during the Term of this Rail Agreement, Railroad, at its sole cost and expense unless otherwise provided herein to the contrary, shall inspect, maintain and repair, replace in good and working order, condition and repair the City Track in accordance with all Laws (as defined below) and applicable specifications established by the Association of American Railroads and other industry standards ("Industry Standards"). Railroad's obligations shall include, without limitation, inspection, repair and maintenance of all City Track, rails, ties, ballast and other track materials, and road crossings where City Track crosses a roadway. No later than the last day of each calendar month, Railroad shall provide to the City Engineer a copy of the monthly rail inspection for that calendar month. Railroad shall obtain all required permits prior to operation. Railroad shall not make, nor cause or suffer to be made any repairs or other work for which a permit or other Regulatory Approval (as defined below) is required by any applicable building code, standard, or regulation, including without limitation the City Building Code, or of any rule or regulation of City without first obtaining City's prior written consent and a permit or other Regulatory Approval therefore. Railroad hereby waives all rights to make repairs at City's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

B. Responsibility over structures and equipment. Railroad shall be responsible, at its sole cost and expense, for inspection, maintenance and repair of all control systems signals, gates and fences and for inspection, maintenance and repair of all structures and equipment on and over the City Track, except for the Bridge for which City shall be solely responsible. Otherwise, except as specifically provided in this Rail Agreement, City shall not be obligated to make any

inspections, repairs, replacement or renewals of any kind, nature or description whatsoever to the City Track.

C. Routine Maintenance. Railroad, at its sole cost and expense, shall provide all initial start-up and all routine repairs and day-to-day maintenance of the City Track including without limitation, adjustment of ballast and proper gauge distance, replacement of rail bolts, switches, oiling of switches, crossing guards and vegetation control (as further addressed in Article XVII(C)), replacement of track sections, ties, cross ties and sleepers, if needed. To the extent the 'City Railroad Track Inspection Report' points out any deficiencies, Railroad shall perform all work to correct the deficiencies listed in as routine maintenance in a timely manner and no later than by the end of the second year of this agreement (September __, 2011).

D. Major Repairs, Maintenance and Improvements. Except as provided in Subsection B, and unless City notifies Railroad in writing that it will perform any identified Major Capital Repairs and Improvements (as defined below), Railroad will perform all Major Capital Repairs and Improvements in accordance with this Subsection D. Railroad is prohibited from performing any Major Capital Repair and Improvement without the prior written consent of City regardless of whether the costs of such Major Capital Repair and Improvements will be certified by City or whether Railroad intends to seek future rent credit for such costs.

E. "Major Capital Repairs and Improvements" includes non-routine repairs and maintenance, any significant repair or improvement of City Track (including, but not limited to repaving of the Flosden yard, if required, and repair of disabled light towers, and rearrangement, reconstruction or changes in elevation of City Track or pedestrian crossings, whether due to present requirements or changes in Laws or at City's or Railroad's request.

F. City's Right to Inspect. City and its authorized agents shall have the right without notice at any time to inspect the City Track and to determine whether Railroad is complying with its obligations under this Rail Agreement. In the event that damage or deterioration to City Track results in the same not meeting the standard of maintenance required by City or Industry Standards, then Railroad shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the City Track and complete the same with due diligence. City's right of inspection shall not relieve Railroad of its independent responsibility to maintain City Track in a condition as good as, or better than, its condition on the commencement date of this Rail Agreement, excepting ordinary wear and tear. City shall not be liable in any manner, and Railroad hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of City's inspection of City Track, or entry by the public (as Railroad has a non-exclusive right to use the City Track) onto the City Track.

G. City's Right to Repair. In the event (i) Railroad fails to inspect or to perform routine maintenance in accordance with this Article; (ii) Railroad, its agents or invitees cause any damage to the City Track or adjacent areas; or (iii) Railroad fails to promptly repair any damage to the City Track or adjacent areas caused by Railroad or its agents, City may perform the same at Railroad's sole cost and expense and Railroad shall immediately reimburse City therefore. If the cost (including, but not limited to, salaries of City staff and attorneys' fees) of any such required work made at Railroad's expense is in excess of Two Thousand Dollars (\$2,000), then Railroad shall immediately pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. "Hard" costs shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees. In the event Railroad fails to perform any Major Capital Repair and Improvement that Railroad is required to perform under this Rail Agreement, City may perform the same at City's cost and expense. If the

cost (including, but not limited to, salaries of City staff and attorneys' fees) of any such repairs or replacements is in excess of Two Thousand Dollars (\$2,000), then Railroad shall immediately pay to City an administrative fee equal to ten percent (10%) of the total hard costs of the work. With respect to any inspection or maintenance performed by City where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Railroad shall pay to City, , an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial notice relating to Railroad's failure to inspect and maintain the City Track in accordance with this Article ("Maintenance Notice"). In the event City determines during subsequent inspection(s) that Railroad has failed to inspect and maintain the City Track in accordance with this Article, then Railroad shall pay to City an amount equaling Three Hundred Dollars (\$300.00) for each additional Maintenance Notice, if applicable, delivered by City to Railroad following each inspection. Parties agree that the charges associated with each inspection of the City Track and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which City will incur by reason of City's inspection of City Track and issuance of each Maintenance Notice. Railroad's failure to comply with the applicable Maintenance Notice and City's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of City under this Rail Agreement, at law or in equity. The amounts set forth in this Article shall be due within three (3) business days following delivery of the applicable Maintenance Notice. City reserves the right at any time to use City Track and make alterations, additions, repairs, deletions or improvements to any part of the City Track or appurtenances provided that any such use, alterations or additions shall not materially adversely affect the functional utilization of the City Track for the permitted use under this Rail Agreement. Prior to entering onto City Track for the purposes described in this Subsection G, City shall notify the Railroad at least five (5) working days in advance of such use or work so that the Railroad may assess whether there are conflicts with inbound or outbound rail traffic during the proposed period of use or work and, in the event it deems necessary, Railroad shall ask the City to adjust its schedule and/or arrange for flagging or other protection as required.

H. For purposes of this Rail Agreement, the term "ordinary wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of City Track in any manner whatsoever related to directly, or indirectly, to Railroad's failure to comply with the terms and conditions of this Rail Agreement.

I. Acts of God. Nothing contained herein shall require Railroad to operate or Railroad or City to repair or replace the City Track thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of God, except that this provision shall not affect any obligation to make repairs to City Track pursuant to Article XX in the event of any damage or destruction of the City Track.

J. Improvements Part of Realty. All repairs and improvements shall immediately upon construction or installation become part of the City Track and shall be owned by City without compensation to Railroad.

ARTICLE X. REGULATORY APPROVALS.

Railroad understands that Railroad's operations on the City Track, changes in use, or maintenance and improvements to the City Track may require an authorization, approval or a

permit required by any governmental agency having jurisdiction over City Track, including but not limited to the California Public Utilities Commission, the Federal Railroad Administration, the Surface Transportation Board, the Bay Conservation and Development Commission, City (in its regulatory capacity), City's Chief Engineer, and the City's Planning Division and/or Commission performing environmental review under the California Environmental Quality Act, (each a "Regulatory Approval"). Railroad shall be solely responsible for obtaining any such Regulatory Approval, and Railroad shall not seek any Regulatory Approval without first obtaining the prior written approval of City. Unless otherwise provided herein, all costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Railroad. Railroad shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; provided, however, Railroad shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any regulatory agency (other than City), if the City is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the City Track or City's interest therein or would create obligations on the part of the City (whether on or off of the City Track) to perform or observe, unless in each instance the City has previously approved such conditions in writing, in City's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Railroad to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Railroad, and City shall have no liability, monetary or otherwise, for said fines and penalties. To the fullest extent permitted by Law, Railroad agrees to indemnify and hold City, City and their Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or City may incur as a result of Railroad's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of this Article, Railroad agrees and acknowledges that (i) City has made no representation or warranty that Regulatory Approvals, if any, can be obtained, (ii) although City is an agency of the City, City has no authority or influence over City, State or federal officials, departments, boards, commissions or agencies or any other regulatory body (individually defined as "Regulatory Agency" and collectively as "Regulatory Agencies") responsible for the issuance of such required Regulatory Approvals, (iii) City is entering into this Rail Agreement in its capacity as a landowner with a proprietary interest in the City Track and not as a regulatory agency of the City with certain police powers, and (iv) Railroad is solely responsible for obtaining any and all required Regulatory Approvals. Accordingly, Railroad understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and City's status as an agency of the City shall in no way limit the obligation of Railroad to obtain approvals from any Regulatory Agencies (including City) that have jurisdiction over the City Track. Railroad hereby releases and discharges City from any liability relating to the failure of any Regulatory Agency (including City) from issuing any required Regulatory Approval.

ARTICLE XI. REPAIR AND IMPROVEMENTS.

All repairs and improvements to City Track made by or on behalf of Railroad shall be subject to the following conditions, which Railroad covenants faithfully to perform:

1. All repairs and improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications provided by Railroad and previously approved by City in writing (if required by this Rail Agreement) and in compliance with the applicable building, zoning and other applicable Laws and Industry Standards, including, but not limited to, compliance with the Americans with Disabilities Act, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization.
2. All repairs and improvements shall be performed with reasonable dispatch and prosecuted to completion, and only by trained Railroad personnel, duly licensed and bonded contractors or mechanics subject to any conditions that City may reasonably impose.
3. Railroad shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining and surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its repairs and improvements. Railroad shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the repairs and improvements and make adequate provision for the safety and convenience of all persons affected repairs and improvements. Dust, noise and other effects of the repairs and improvements shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Railroad shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the repairs and improvements have been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.
4. At the completion of any Major Capital Repair and Improvements, Railroad shall furnish to City one reproducible "as built" drawing of all Major Capital Repair and Improvements.

ARTICLE XII. DEFAULT BY RAILROAD; REMEDIES.

A. Event of Default. The occurrence of any of the following events shall constitute a default by Railroad:

1. Failure to pay to City Wharfage, if any is established in the future, or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from City. Notwithstanding the foregoing, City shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Railroad after Railroad has received two (2) such notices in such twelve (12)-month period shall constitute an Event of Default by Railroad hereunder without any further action by City or opportunity of Railroad to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or
2. Failure to perform any other provision of this Rail Agreement, if the failure to perform

continues for a period of ten (10) calendar days or more after written notice of such failure by City, or if the failure is not susceptible to cure within 10 days if Railroad does not commence cure within the 10 day period and thereafter diligently prosecute cure to completion.

3. An assignment or attempted assignment, of this Rail Agreement by Railroad;
4. Either (i) the failure of Railroad to pay its debts as they become due, the written admission of Railroad of its inability to pay its debts, or a general assignment by Railroad for the benefit of creditors; or (ii) the filing by or against Railroad of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Railroad's or any substantial part of Railroad's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Railroad's interest in this Railroad.

B. City's Remedies. Upon default by Railroad, City shall, without further notice or demand of any kind to Railroad or to any other person, and in addition to any other remedy City may have at law or in equity, have the ability to immediately terminate this Rail Agreement and Railroad's right to use the City Track. Upon any such termination, Railroad shall immediately vacate and discontinue its use of the City Track and City may take any and all action to enforce Railroad's obligations.

C. Remedies Not Exclusive. The remedies set forth in this Article are not exclusive; they are cumulative and in addition to any and all other rights or remedies of City now or later allowed by Law. Railroad's obligations hereunder shall survive any termination of this Rail Agreement.

ARTICLE XIII. COMPLIANCE WITH LAWS AND REGULATIONS.

Railroad, at Railroad's sole cost and expense, promptly shall comply with all Laws relating to or affecting the use of City Track, in effect either at the time of execution of this Rail Agreement or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties.

For purposes of this Rail Agreement, "Laws" means all present or future laws, statutes, ordinances, codes, resolutions, regulations, judicial decisions, requirements, proclamations, orders or decrees of any municipal, county, state or federal government or the departments, courts, commissions, boards and officers thereof, or other governmental or regulatory authority with jurisdiction over City Track or any portion thereof (including, but not limited to, the Mare Island Specific Plan, and the Waterfront Master Plan) and with any and all recorded covenants, conditions and restrictions affecting the City Track or any portion thereof; whether in effect at the time of the execution of this Rail Agreement or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties.

ARTICLE XIV. SUBCONTRACTORS.

Railroad may subcontract any portion of the shorttime operations governed by this Rail Agreement provided that (i) City consents in writing to such subcontractor; (ii) the subcontractor

shall, in writing for the benefit of City, agree to be bound by all of the provisions of this Rail Agreement; (iii) the existence of any subcontract shall not relieve Railroad of any of its obligations under this Rail Agreement, and the use of the City Track by any subcontractor shall be considered use by Railroad with Railroad and the subcontractor jointly and severally liable with respect to such use; and (iv) City shall have no obligations to the subcontractor.

ARTICLE XV. UTILITIES AND SERVICES.

City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the City Track except for the Bridge, as specified in Article IXB. Railroad shall make arrangements and shall pay all charges for all utilities to be furnished on, in or to the City Track or to be used by Railroad, including, without limitation, gas, electrical, water, sewer and telecommunication services. Railroad shall pay all charges for said utilities, including charges for the connection and installation of the utilities.

City has no responsibility or liability of any kind with respect to the provision of any services to Railroad or on, in, or to the City Track. Railroad shall make arrangements and shall pay all charges for all services to be furnished on, in or to the City Track or to be used by Railroad, including, without limitation, vegetation abatement, security service, garbage and trash collection, janitorial service and extermination service.

ARTICLE XVI. HAZARDOUS MATERIALS.

For purposes of this Rail Agreement:

"Handle" or "Handling" means to use, generate, process, produce, package, treat, transport, store, emit, discharge or dispose.

"Hazardous Material" means any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk or injury to health, safety, the environment or property, including, but not limited to, explosives, radioactive materials, all of those materials, wastes and substances designated as hazardous, toxic, pollutant or contaminant by the United States Environmental Protection Agency, the Federal Railroad Administration, the City and County of San Francisco, the United States Department of Labor, the United States Department of Transportation, any department or agency of the California Environmental Protection Agency or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

"Release" means when used with respect to Hazardous Material, any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside; or in, on, under or about any other part of the City Track or into the environment.

Railroad agrees that it will: (i) not (A) permit Hazardous Materials to be present on or about the City Track (other than as cargo) or (B) Release any Hazardous Materials on, in, at, under, or emanating from, the City Track; (ii) comply with all Environmental Laws relating to the use of City Track and the use or presence of Hazardous Materials on or about the City Track and not engage in or permit others to engage in any activity on City Track in violation of any Laws; and (iii) Handle all Hazardous Materials discovered, introduced, or Released on or about City Track

during Railroad's use of City Track in compliance with all Laws.

Notwithstanding the foregoing, Railroad shall not be responsible for the safe Handling of Hazardous Materials introduced on the City Track during Railroad's use of City Track solely by City, City or their Agents, except to the extent Railroad exacerbates or Releases such Hazardous Materials. Railroad shall protect its employees and the general public in accordance with all Laws. City may from time to time request, and Railroad shall be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials including without limitation, Hazardous Material cargo are being Handled in a manner which complies with all Laws. City shall have the right, but not the obligation, to inspect and audit City Track for Hazardous Materials including the right to obtain environmental samples. City's failure to inspect or obtain samples or to detect conditions attributable to Railroad's operation if an inspection is conducted shall not be deemed to be a release of any liability for environmental conditions subsequently determined to be Railroad's responsibility under this Rail Agreement. Railroad shall immediately notify City in writing of and when Railroad learns or has reason to believe that there has been any Release of any quantity of a Hazardous Materials in, on or about the City Track or the environment. After notifying City, and in compliance with all Laws and this Rail Agreement, if the release was caused by Railroad or its agents including contractors, Railroad must promptly perform whatever removal or remedial action is necessary to clean up the Release to City's satisfaction. If Railroad fails to comply with this provision, City may perform the removal or remedial action at Railroad's expense, and Railroad shall immediately reimburse City therefor. Railroad shall not be responsible for the removal of Hazardous Materials introduced in, on or about City Track during Railroad's occupancy of the City Track solely by City, City or their respective agents or for any Hazardous Materials pre-existing condition .

Prior to the expiration or earlier termination of this Rail Agreement, Railroad, at its sole cost and expense, shall remove to the City's satisfaction any and all Hazardous Materials introduced in, on, under or about the City Track during Railroad's use thereof. Further, Railroad, at its sole cost and expense, shall remove any Hazardous Materials discovered on the City Track during Railroad's occupancy which is required to be removed by any governmental agency, including City, which removal would not have been required except for Railroads use of the City Track or Railroad's alteration to the equipment related to the City Track. This provision shall not apply to a pre-existing Hazardous Materials condition discovered due to railraod's operations. Notwithstanding the foregoing, Railroad shall not be obligated to remove any Hazardous Materials introduced before or during Railroad's use of the City Track solely by City or its agents, except to the extent Railroad exacerbates such Hazardous Materials conditions.

Prior to the expiration or earlier termination of this Rail Agreement, City shall have the right but not the obligation to conduct an inspection and audit at Railroad's cost, of the City Track for the purpose of identifying Hazardous Materials existing on or under the City Track that Railroad is required to remove. City's failure to conduct an audit or to detect conditions of any audit is conducted shall not be deemed to be a release of any liability for environmental conditions subsequently determined to be Railroad's responsibility under this Rail Agreement. If Railroad fails to comply with this provision, City may perform the removal or remedial action at Railroad's expense, and Railroad shall immediately reimburse City therefor.

Railroad shall surrender the City Track to City upon the expiration or earlier termination of this Rail Agreement free of debris, waste or Hazardous Materials placed on, about or near City Track by Railroad, its agents or invitees, and in a condition which complies with all Laws and any additional requirements of City that are reasonably necessary to protect the value of the City Track, including, without limitation, the obtaining of any closure permits or other governmental permits or approvals related to Railroad's use of Hazardous Materials in or about the City Track. The burden of proof hereunder shall be upon Railroad. For purposes hereof, the term "normal wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the City Track in any manner whatsoever related to Hazardous Materials whether directly, or indirectly.

F. Railroad's Environmental Condition Notification Requirements.

Railroad shall notify City upon the issuance of any environmental permit, approval or license issued by any of the following: the U.S. Environmental Protection Agency; any California Environmental Protection Agency board, department or office, including, but not limited to, the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, the Bay Area Air Quality Management District, the SF Department of Public Health, SF Public Utilities Commission, the SF Fire Department, the California Public Utilities Commission, the U.S. Department of Transportation, the Federal Rail Administration, any other governmental or quasi-governmental agency as requested from City from time to time, and any hazardous waste generator identification numbers issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency. Railroad shall provide notice to City by providing a list of the issuing entity, the permit, approval or license number and the date of issuance and expiration of the permit, approval or license and the generator identification number(s). In addition, Railroad shall provide to City a list of any plan or procedure required to be prepared and/or filed with an environmental regulatory agency, including a Spill Pollution Control and Countermeasure plan that is required for its operations. Railroad may use a form provided by City to submit the information required under this subsection. Railroad shall provide City with copies of any of the documents listed in this subsection upon request.

Railroad shall immediately notify City in writing of any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under Laws to be reported to a governmental or regulatory agency.

Railroad shall immediately notify City in writing of, and shall contemporaneously provide City with a copy of:

1. Any written notice of Release of Hazardous Materials in or on the City Track that is provided by Railroad to a governmental or regulatory agency including any City agency other than the City;
2. Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by Railroad from any governmental or regulatory agency including any City agency other than the City;
3. Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a governmental or regulatory agency, including any City agency other than the City, against Railroad and that relates to the Release or discharge of Hazardous Material on or from the City Track;
4. Any claim that is instituted or threatened by any third party against Railroad or any other

occupant of the City Track and that relates to any Release or discharge of Hazardous Materials on or from the City Track; and

5. Any notice of the termination, expiration or substantial amendment of any environmental operating permit or license needed by Railroad.

G. Failure to comply with this Article shall constitute a material default under the Rail Agreement. In the event of such default, City shall have all rights available under the Rail Agreement and at law or equity including, without limitation, the right to either: Terminate this Rail Agreement and collect damages City incurs as a result of such default, including, without limitation, cleanup costs incurred by City resulting from the cleanup of any Hazardous Materials present in or on the soil, or groundwater; or Continue this Rail Agreement and require Railroad to clean up such Hazardous Materials at the Railroad's sole cost and expense.

H. Presence of Hazardous Materials. California law requires the disclosure of the presence or potential presence of certain Hazardous Materials. Accordingly, Railroad is hereby advised that Hazardous Materials (as herein defined) may be present on or near the City Track, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and materials commonly used in construction of rail track containing chemicals, such as lead and formaldehyde. Further, as required by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 120(h)(1) and 120(h)(3) and implemented by 40 Code of Federal Regulations 373.3, This subsection provides the required Hazardous Substances Notification for Zone 19, which contains the City Track. The following known Hazardous Materials is present on the property: Lead based paint, as further described in the Finding of Suitability to Transfer for Zone 19 (Railroad Spur) prepared by the Department of the Navy, Final, December 17, 1999, a copy of which has been delivered to or made available to Railroad. By execution of this Rail Agreement, Railroad acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Railroad must disclose the information contained in this Subsection to any sublicensee, licensee, transferee, or assignee of Railroad's interest in this City Track. Railroad also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

I. Survival. Railroad's obligation under this Article shall survive the expiration or earlier termination of the Rail Agreement.

ARTICLE XVII. INSURANCE.

A. The City of Vallejo, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects; liability, including defense costs, arising out of activities performed by or on behalf of the Railroad; products and completed operations of the Railroad; premises owned, occupied or used by the Railroad; or automobiles owned, leased hired or borrowed by the Railroad. Railroad must maintain in force, during the full term of this Rail Agreement, insurance in the following amounts and coverages regarding City Track and activities in and about City Track:

1. General Liability Insurance: \$5,000,000
2. Automobile Liability Insurance: \$1,000,000
3. Worker's Compensation; Employer's Liability: \$1,000,000
4. Railroad Protective Liability: \$5,000,000
5. Contractor's Pollution: \$5,000,000
6. Professional Legal Liability Insurance: \$5,000,000.

B. Compliance with City's Risk Manager's Requirements. Railroad shall not do anything, or permit anything to be done, in or about the City Track that would be prohibited by or increase rates under a standard form fire insurance policy or subject City to potential liability. Railroad shall faithfully observe, at no cost to City, any and all requirements of City's Risk Manager with respect to Railroad's use of the City Track, so long as such requirements do not unreasonably interfere with Railroad's use of the City Track or are otherwise connected with standard prudent commercial practices and Industry Standards.

C. Neither City nor Railroad shall permit, place, pile, store or stack any flammable material within ten (10) feet of the centerline of the City Track. To reduce the risk of fire and as part of its maintenance obligation under this Rail Agreement, Railroad must conduct weed abatement on and adjacent to City Track in accordance with an integrated pest management plan. Railroad shall receive no allowance or credit for performing the vegetation abatement required by this Rail Agreement.

ARTICLE XVIII. INDEMNITY.

A. Railroad's Indemnity.

1. Indemnity and Exculpation. Railroad shall indemnify and hold City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions and their respective employees and Agents (collectively, "Indemnified Parties") harmless from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all liabilities, injuries, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind ("Claims"), arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any agents and/or invitees of Railroad, or loss or damage to or destruction of any property occurring in, on or about the City Track as a result of Railroad's use or operations or (b) any default by Railroad in the observance or performance of any of the terms, covenants or conditions of this Rail Agreement, or (c) the use or manner of use of the City Track or the activities therein by Railroad, its agents, or invitees, or (d) any construction or other work undertaken by Railroad on the City Track, or (e) any acts, omissions or negligence of Railroad, its agents or invitees, in, on or about the City Track.

2. Hazardous Materials Indemnity. Railroad shall indemnify, defend and hold the Indemnified Parties harmless from, without cost to the Indemnified Parties, any and all Claims which arise during or after the term of this Rail Agreement as a result of the presence, Handling, Release, or threatened Release of Hazardous Materials by the Railroad from, on or about the City Track during Railroad's use of the City Track, except where such presence is caused by the sole negligence or willful misconduct of the Indemnified Parties and Railroad has not exacerbated the

Hazardous Material condition. Railroad's obligation to indemnify, defend and hold the Indemnified Parties harmless shall include without limitation, all costs of investigating and remediating the same, damages for diminution in the value of the affected City property surrounding the City Track, damages for the loss or restriction on use of rentable or usable space or of any amenity of the City Track, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of Claims, attorneys' fees, consultant fees and expert fees.

This indemnification of the Indemnified Parties by Railroad includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by City or required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater in, on, under or about the affected City property surrounding the City Track which Hazardous Materials were introduced or Released in, on, under or about the affected City property surrounding the City Track beginning during Railroad's occupancy, except where such presence is caused by the sole negligence or willful misconduct of the Indemnified Parties. Railroad's obligation to indemnify, defend and hold the Indemnified Parties harmless shall include without limitation, any and all causes other than the sole negligence or willful misconduct of the Indemnified Parties. Railroad's obligations hereunder shall survive the expiration or earlier termination of this Rail Agreement.

3. General Indemnity Provision. Except as explicitly provided below in Subsection B, the indemnification obligations of Railroad set forth in this Rail Agreement shall be enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The indemnification obligations of Railroad set forth in this Rail Agreement shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Rail Agreement. The indemnification obligations of Railroad set forth in this Rail Agreement includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties except as explicitly provided below in subsection B. The indemnification obligations of Railroad set forth in this Railroad Agreement shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Railroad, its Agents or Invitees.

4. In addition to Railroad's obligation to indemnify the Indemnified Parties, Railroad specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the indemnification obligations of Railroad set forth in this Railroad Agreement, even if the allegations are or may be groundless, false or fraudulent. Railroad's obligation to defend, with defense counsel to be approved by City, shall arise at the time such claim is tendered to Railroad by the Indemnified Parties and shall continue at all times thereafter.

5. The indemnification obligations of Railroad set forth in this Railroad Agreement shall include without limitation, indemnification from all Claims. This indemnification by Railroad shall begin from the first notice that any claim or demand is or may be made. The provisions of this Article XIX shall survive the expiration or earlier termination of this Rail Agreement.

6. Exculpation. Railroad, as a material part of the consideration to be rendered to City, hereby waives any and all Claims against the Indemnified Parties and agrees to hold the

Indemnified Parties harmless from any Claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about City Track for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by the Indemnified Parties.

7. The Indemnified Parties shall not be responsible for or liable to Railroad, and Railroad hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the City Track by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining City properties or of other City tenants that are served by Railroad, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective systems, and (v) any other acts, omissions or causes. Nothing in this Article XIX shall relieve the Indemnified Parties from liability caused by the sole gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

ARTICLE XIX. TERMINATION BY CITY.

City shall have the option, in its sole discretion, to terminate this Rail Agreement or any Portion thereof at any time during the term hereof . City shall exercise this option by giving Railroad written notice of termination specifying the date on which termination shall become effective. Upon receipt of the notice, Railroad shall commence and perform, with diligence, all actions necessary on the part of Railroad to effect the termination of this Rail Agreement or any portion thereof on the date specified by City and to minimize the liability of Railroad and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City.

ARTICLE XX. DAMAGE AND DESTRUCTION.

1. Damage and Destruction. If the City Track is damaged by fire or other casualty, then Railroad shall repair the same, at Railroad's cost, within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such condition is satisfied, this Rail Agreement shall remain in full force and effect.

2. Railroad shall use its commercially reasonable efforts to notify City within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, City shall have the option to notify Railroad of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Rail Agreement shall continue in full force and effect; or (b) City's election to terminate this Rail Agreement as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City.

3. If City elects not to allocate funds for such repair, City shall give written notice to Railroad

within sixty (60) days after the date City elects not to appropriate funds of its election to terminate this Rail Agreement as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City.

4. If at any time during the last six (6) months of the Term of this Rail Agreement, the City Track is damaged or destroyed, then either City or Railroad may terminate this Rail Agreement by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Railroad may terminate only if such damage or destruction substantially impairs its use of the City Track. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

5. Notwithstanding anything to the contrary in this Rail Agreement, (i) City shall have no obligation to repair the City Track, (ii) Railroad shall not be entitled to any damages, loss of revenue or other compensation, and (iii) Railroad shall not be entitled to terminate this Rail Agreement, in the event the damage or destruction is attributable to any act or omission of Railroad, its agents, or invitees. In no event shall City be required to repair any damage to Railroad's property. In the event the City Track is substantially damaged or destroyed and City intends to rebuild for public purposes inconsistent with this Rail Agreement, City may terminate this Rail Agreement upon written notice to Railroad.

6. Waiver. City and Railroad intend that the provisions of this Article govern fully in the event of any damage or destruction and accordingly, City and Railroad each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

ARTICLE XXI. SURRENDER.

1. Upon the expiration or earlier termination of this Rail Agreement, Railroad shall surrender to City the City Track in good condition (except for ordinary wear and tear). On or before the expiration or earlier termination hereof, Railroad shall remove all of its personal property and shall perform all restoration made necessary by the removal of any improvements, alterations or Railroad's personal property.

2. City may elect to retain or dispose of Railroad's personal property that Railroad does not remove from the City Track without prior written or verbal notice. Railroad waives all Claims against City for any damage to Railroad resulting from City's retention or disposition of Railroad's personal property. Railroad shall be liable to City for all costs incurred by City for storing, removing or disposing of Railroad's personal property.

3. If Railroad fails to surrender the City Track as required by this section, Railroad shall hold City harmless from all damages resulting from Railroad's failure to surrender the City Track, including, but not limited to, Claims made by a succeeding Railroad or Railroad resulting from Railroad's failure to surrender the City Track.

ARTICLE XXII. SIGNS.

Railroad shall not have the right to place, construct or maintain any sign, decoration, video display, advertisement, awning, banner or other exterior decoration or notices on or adjacent to City Track without City's prior written consent. Any sign that Railroad is permitted to place, construct or maintain on or adjacent to City Track shall comply with all Laws relating thereto, including but not limited to City's Sign Ordinance and building permit requirements, and shall obtain all Regulatory Approvals required by such Laws. City makes no representation with respect to Railroad's ability to obtain such Regulatory Approval. Railroad, at its sole cost and expense, shall remove all signs placed by it on or adjacent to City Track at the expiration or earlier termination of this Rail Agreement.

ARTICLE XXIII. NOTICES.

1.Except as otherwise expressly provided in this Rail Agreement or by Law, any and all notices or communications required or permitted by this Rail Agreement or by Law to be served on, given to or delivered to either party by the other party shall be in writing and shall be given by one of the following methods: (a) delivering the notice in person, (b) sending the notice by United States Mail, first class, postage prepaid, or (c) sending the notice by nationally recognized overnight courier or mail, with postage prepaid, to the mailing address set forth in the below. Subject to the restrictions set forth below and only for the convenience of the parties, copies of notices also may be given by telefacsimile to the following telefacsimiles. Either party may change such party's mailing address or telefacsimile number at any time by giving written notice of such change to the other party in the manner provided above at least ten (10) days prior to the effective date of the change.

2.All notices under this Rail Agreement shall be deemed to be duly served, given, delivered, made or communicated on the date personal delivery actually occurs or, if mailed, on the next business day following the date of deposit in the United States Mail or with the nationally recognized overnight courier. A person or party may not give official or binding notice by telefacsimile. Service of process at Railroad's address set forth in the below or other address, notice of which is given in accordance with the terms of this Section, shall be valid and binding upon such party.

To City:

Assistant City Manager/Community Development
City of Vallejo
555 Santa Clara St.
Vallejo, California, 94590
Telephone: (707) 648 4579 Facsimile: (707) 648
4426

To Railroad

S.F. Bay Railroad, Inc.
100 Cargo Way
San Francisco, CA 94124
Telephone:
Facsimile
Attn:

ARTICLE XXIV. TAXES AND ASSESSMENTS.

Railroad agrees to obtain a City of Vallejo business license, pay to the proper authority any and all taxes, assessments and similar charges on the City Track in effect at the time this Rail Agreement is entered into, or which become effective thereafter, including all taxes levied or assessed upon possession, use, or occupancy, as distinguished from ownership. Railroad, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Rail Agreement may create a possessory interest subject to property taxation and that Railroad, and any permitted successor or assign may be subject to the payment of such taxes. Railroad, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this Rail Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Railroad shall report any assignment or other transfer of any interest in this Rail Agreement or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Railroad further agrees to provide such other information as may be requested by the City or City to enable the City or City to comply with any reporting requirements under applicable law with respect to possessory interest.

ARTICLE XXV. ATTORNEYS' FEES.

A. Litigation Expenses. If either party hereto brings an action or proceeding (including any cross complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Rail Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief

sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

B. Appeals. Attorneys' fees under this section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

C. City Attorney. For purposes of this Rail Agreement, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

ARTICLE XXVI. MINERAL RESERVATION.

In no event shall City be liable to Railroad for any Claims arising from mineral reservation or exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of Railroad, or entitle Railroad to any abatement or diminution of rent or otherwise relieve Railroad from any of its obligations under this Rail Agreement.

ARTICLE XXVII. NON DISCRIMINATION.

1. Non Discrimination. Covenant Not to Discriminate. In the performance of this Rail Agreement, Railroad covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under Chapter 12 of the San Francisco Administrative Code against any employee of Railroad, any City and County employee working with Railroad, any applicant for employment with Railroad, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Railroad in the City and County of San Francisco.

ARTICLE XXVII. MISCELLANEOUS.

A. California Law. This Rail Agreement shall be construed and interpreted in accordance with the Laws of the State of California and City's Charter and City and Railroad hereby irrevocably consent to the jurisdiction and proper venue of such State.

B. Entire Agreement. This Rail Agreement contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Rail Agreement. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or

oral, relating to such subject matter are superseded in total by this Rail Agreement. No prior drafts of this Rail Agreement or changes from those drafts to the executed version of this Rail Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Rail Agreement.

C. Amendments. No amendment of this Rail Agreement or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

D. Severability. If any provision of this Rail Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Rail Agreement, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Rail Agreement shall be valid and be enforceable to the fullest extent permitted by law.

E. No Party Drafter; Captions. The provisions of this Rail Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties. Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of this Rail Agreement.

F. Singular, Plural, Gender. Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

G. Successors. The terms, covenants, agreements and conditions set forth in this Rail Agreement shall bind and inure to the benefit of City and Railroad and, except as otherwise provided herein, their personal representatives and successors and assigns.

H. Real Estate Broker's Fees. City will not pay, nor will City be liable or responsible for, any finder's or broker's fee in connection with this Rail Agreement. Railroad agrees to indemnify and hold City harmless from any Claims, including attorneys' fees, incurred by City in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Rail Agreement.

I. Counterparts. For convenience, the signatures of the parties to this Rail Agreement may be executed and acknowledged on separate pages which, when attached to this Railroad, shall constitute as one complete Agreement. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

K. Authority. If Railroad signs as a corporation or a partnership, each of the persons executing this Rail Agreement on behalf of Railroad does hereby covenant and warrant that Railroad is a duly authorized and existing entity, that Railroad has and is qualified to do business in California, that Railroad has full right and authority to enter into this Rail Agreement, and that each and all of the persons signing on behalf of Railroad are authorized to do so. Upon City's request, Railroad shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

L. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Railroad under this Rail Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, shall constitute a waiver of such breach or of City's rights to demand strict compliance with such term, covenant or condition. City's consent to or approval of any act by Railroad requiring City's

consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act by Railroad. Any waiver by City of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Rail Agreement.

M. **Attorneys' Fees.** In the event of any action or proceeding in law or equity between City and Railroad to enforce any provision of this Rail Agreement or to protect or establish any right or remedy of either party to this Rail Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit and, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. For purposes of this Rail Agreement, reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience who practice in Solano County with approximately the same number of attorneys as employed by the Office of City Attorney, or Actual outside counsel fees or a combination of both.

Time is of Essence. Time is of the essence with respect to all provisions of this Rail Agreement in which a definite time for performance is specified.

N. **Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Rail Agreement shall be cumulative, except as may otherwise be provided herein.

O. **Survival of Indemnities.** Termination or expiration of this Rail Agreement shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Rail Agreement, the ability to collect any sums due, nor shall it affect any provision of this Rail Agreement that expressly states it shall survive termination or expiration hereof.

P. **Relationship of the Parties.** City is not, and none of the provisions in this Rail Agreement shall be deemed to render City, a partner in Railroad's business, or joint venturer or member in any joint enterprise with Railroad. Neither party shall act as the agent of the other party in any respect hereunder. This Rail Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

Q. **No Recording.** Railroad shall not record this Rail Agreement or any memorandum hereof in the Official Records.

R. **Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of City and/or City shall be personally liable to Railroad, its successors and assigns, in the event of any default or breach by City and/or City or for any amount which may become due to Railroad, its successors and assigns, or for any obligation of City and/or City under this Rail Agreement.

S. **Additional Written Agreement Required.** Railroad expressly agrees and acknowledges that no officer, director, or employee of City or City is authorized to offer or promise, nor is City or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by either the City Manager.

T. **The persons signing this Agreement for each Party hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of his/her respective Party.**

U. **Counterparts.** The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

V. **Facsimile Signature; Electronic Signature.** This Agreement shall be binding upon the receipt

of facsimile signatures or e-mailed by PDF or otherwise. Any person transmitting his or her signature by facsimile or electronically shall promptly send an original signature to the other party pursuant to the notice provision of this Agreement. The failure to send an original shall not affect the binding nature of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, City and Railroad execute this Rail Agreement at Vallejo ,
California, as of the last date set forth below

SF Bay Railroad-Mare Island, a Delaware Corporation

By: Jacob Park / Vice President
Name/title

DATE: 10-9-2009

Vallejo Business License No. _____

(City Seal)

CITY OF VALLEJO,
A municipal corporation

By: [Signature]
Robert F.D. Adams
Interim City Manager

DATE: 10/14/09

ATTEST:

By: _____
Aileen M. Weddell
Interim City Clerk

APPROVED AS TO CONTENT:

[Signature]
Craig Whittom
Assistant City Manager/Community Dev.

APPROVED AS TO INSURANCE

REQUIREMENTS:

[Signature]
Harry B. Maurer
Risk Manager

APPROVED AS TO FORM:

[Signature]
Frederick G. Soley
City Attorney

Exhibit L

City of Vallejo Final Draft 20-Year Agreement w/SFBR-MI

TRACK LEASE AGREEMENT FOR MARE ISLAND TRACK

THIS LEASE AGREEMENT, dated as of the 1st of January 2010, by and between the City of Vallejo, a municipal corporation, hereinafter called "**City**," and SAN FRANCISCO BAY RAILROAD-MARE ISLAND, a Delaware Corporation, hereinafter called "**SFBR-MI**." City and SFBR-MI are collectively referred to herein as the "**Parties**."

RECITALS

The Parties entered into a preceding Rail Agreement dated October 9, 2009, to allow SFBR-MI to provide limited rail service to a single shipper, which Rail Agreement is superseded in all respects by this Lease Agreement.

The Parties now desire to enter into this Lease Agreement setting forth terms and conditions for the use and management of the Leased Premises as defined in Section 1.02 below.

City obtained ownership of the Leased Premises by means of that certain agreement with the United States Department of the Navy ("Navy") on March __, 2002. Prior to that time, the rail line was operated by the Navy to serve its own facilities and was not part of the national rail system. The City believes that until the present, the Leased Premises have not been the subject of any application by any carrier to be operated as an interstate rail facility, regulated by either the Interstate Commerce Commission or its successor, the Surface Transportation Board of the U. S. Department of Transportation ("STB").

In order to facilitate the economic development of the former Mare Island Naval Base, City is willing to lease the Leased Premises to SFBR-MI, an interstate rail carrier, to allow it to conduct common carrier rail operations on the Leased Premises. In so doing, City expressly disclaims any intent to become a rail carrier or to take on residual common carrier obligations, but is merely making its property available to SFBR-MI to allow it to conduct such operations.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

SECTION I

LEASED PREMISES

SECTION 1.01 - City does hereby lease to SFBR-MI and SFBR-MI does hereby lease from City a rail track of approximately 2.5 miles in length ("City Track") that is part of the Leased Premises. City Track is partially contained on City property within Zone 19 (Railroad Spur) as shown in Figure 1 attached to this Agreement. There is a structure within Zone 19, a 95-year-old steel bridge (Sacramento Street Overpass) "**Bridge**" which spans the railroad spur at Sacramento Street and Farragut Avenue. Zone 19 is located in the City of Vallejo and is bounded by commercial and residential parcels to the east and west; to the north by the Southern Pacific Railroad Right-of-Way and to the south by Tennessee Street and Wilson Avenue junction

SECTION 1.02 - The "**Leased Premises**" shall mean all of City's right, title and interest in and to the following (subject to the exclusions and reservations contained in this Lease Agreement): (a) the Land (as defined below); (b) "**Track**" meaning all rail and fastenings, switches and frogs complete, ties, ballast and signals located on the Land; (c) "**Track Support Structures**" meaning all appurtenances to the Track, including without limitation bumpers, roadbed, embankment, bridges (including the Bridge), trestles, underpasses, culverts and any other structures or things necessary for support or construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, any crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices; and (d) any and all work required by lawful authority during the term of this Lease Agreement in connection with construction, renewal, maintenance and operation of said Track and Track Support Structures and all additions thereto. However, other than that portion of the Track, which is located on the Causeway (as defined below), the Causeway is not part of the Leased Premises.

The "**Land**" shall mean all of the land of City generally described as follows and shown on Figure 1 to this Lease Agreement, and as herein defined, consisting of approximately 2.5 miles of City-owned track of varying width, beginning on or near "G" Street in Mare Island and continuing across the Wichels Causeway "**Causeway**" (contained within Parcel XXI-A as indicated in the Navy's Finding Of Suitability to Transfer (FOST)), turning northward, proceeding along roughly paralleling Couch Street until it meets up with a second set of tracks (currently owned by another entity) in the vicinity of the Flosden Yard near El Sendero Court, reserving unto City the rights specified in Section XII hereof.

SECTION 1.03 - Except as otherwise expressly provided herein, SFBR-MI shall lease the Leased Premises in "as is, where is" condition and without any representation or warranty, either express or implied, as to any matter whatsoever, including without limitation the design or condition of the Leased Premises, its merchantability or its fitness or suitability for any particular purpose, the quality of the material or workmanship of the Leased Premises or conformity of the Leased Premises to its intended use. Except as otherwise expressly provided herein, SFBR-MI also agrees to lease the Leased Premises subject to the interests set forth in subsections 1.03(a-d) below, none of which interests individually or collectively would materially interfere with SFBR-MI's ability to conduct rail freight operations on the Leased Premises as set forth herein.

- (a) reservations or exceptions of minerals or mineral rights, and all private and public easements and rights-of-way, however created, for crossings, pipelines, wire lines, fiber optic facilities, roads, streets, highways and other legal purposes;
- (b) applicable federal, state, county, municipal and local laws, ordinances and regulations;
- (c) encroachments or other conditions that may be revealed by a survey, title search or inspection; and
- (d) all existing ways, alleys, privileges, rights, appurtenances and servitudes, however created, liens of mortgage or deeds of trust, and City's exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Leased Premises, or any portion thereof so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with SFBR-MI's rail operations.

SECTION 1.04 - SFBR-MI understands and agrees to maintain the Leased Premises to the standard specified in the Maintenance Standards, attached as **Exhibit B**.

SECTION II

LEASE TERM

SECTION 2.01 - SFBR-MI shall commence freight rail operations on the Leased Premises on or prior to January 1, 2010. (The date on which SFBR-MI actually commences freight rail operations on the Leased Premises shall be the "**Commencement Date**".) The initial term for this Lease Agreement shall commence on the Commencement Date and shall end on December 31, 2030.

SECTION 2.02 - This Lease Agreement shall automatically be extended for successive ten (10) year extended terms commencing January 1, 2031, unless either Party notifies the other that this Lease Agreement shall not be so extended at least six (6) months prior to the commencement date of any such extended term.

SECTION 2.03 – Upon the commencement of freight rail operations on the Leased Premises, that certain Rail Agreement between the Parties, dated October 9, 2009, shall terminate.

SECTION III

RAIL SERVICE

SECTION 3.01 – Beginning on the Commencement Date and throughout the term of this Lease Agreement, SFBR-MI shall be the sole and exclusive provider of rail freight service. Except as provided in Section 2.04 and Section 3.01(b), SFBR-MI may not use the Leased Premises to provide any type of passenger service; provided, however, that the term "passenger service" shall not include the transportation of officers, employees or invitees of SFBR-MI or the use of Equipment utilized for the transportation of such persons. During the term hereof, City shall not have the right to operate freight trains over the Leased Premises or otherwise exercise rights over the Leased Premises except as specifically set forth herein. City warrants that, as of the Commencement Date of this Lease Agreement, there is no other rail carrier to which City or any other party with an interest in the Leased Premises has granted rights to use the Leased Premises. From the date of this Lease Agreement through the termination hereof, neither City nor SFBR-MI shall grant to any third party any rights whatsoever to conduct rail freight operations on the Leased Premises during the term of this Lease Agreement and any extension hereof without the prior, written consent of the other Party.

SECTION 3.02

(a) City has advised SFBR-MI that City retains the right to make its track available for the operation of rail passenger service on the Leased Premises. City is entitled to exercise this right whenever it is feasible, subject to this section. City may seek to have either SFBR-MI or a heretofore-unknown third party (Rail Passenger Service Provider, hereinafter 'RPSP'), assist the City by providing rail passenger service on the Leased Premises on terms and conditions mutually acceptable to City, RPSP and SFBR-MI. SFBR-MI shall not withhold its acceptance of conditions unreasonably.

(b) In the event that City solicits proposals for the operation of passenger service on the Leased Premises, SFBR-MI may submit a proposal to provide such service on such terms and conditions as are acceptable to SFBR-MI in its reasonable discretion. City may engage either RPSP or SFBR-MI to provide private or common carrier rail passenger service upon terms and conditions agreed upon by and between City, SFBR-MI and RPSP. SFBR-MI agrees to cooperate fully with City and RPSP in the provision of such rail passenger service.

SECTION 3.03 - During the term of this Lease Agreement, SFBR-MI shall not suspend, abandon or discontinue its operation as a common carrier by rail over all or any part of the Leased Premises without first applying, paying for and obtaining from the STB and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approval or exemption from regulation for such discontinuance of operations over the Leased Premises or portion thereof; SFBR-MI shall not seek any such regulatory authority or take any action to suspend, abandon or discontinue its operations on the Leased Premises, as of a date prior to the expiration or termination of this Lease in accordance with its terms, without first receiving written concurrence from City, which shall not be unreasonably withheld. Such concurrence shall not be required for a suspension or discontinuance resulting from an event of force majeure or a lawful embargo not resulting from SFBR-MI's failure to conduct normalized maintenance of the trackage or in connection with the expiration or termination of this Lease in accordance with its terms. If SFBR-MI desires a suspension or discontinuance of service, City shall take one of the following courses of action: (a) concur with such request; (b) waive concurrence and not oppose or encourage opposition of such request; or (c) elect to subsidize continued operation in accordance with 49 USC 10905. No rail that is a part of the Track shall be replaced with lesser weight rail without the prior written consent of City.

SECTION 3.04 – During the term of this lease agreement, and in those portions of the Leased Premises which are exclusively used for rail freight service, SFBR-MI shall perform all normalized maintenance with respect to the Track and Track Support Structures as required by applicable law, at its sole cost and expense, and to the specifications that are required by law, and shall maintain the Leased Premises to the standards specified in the Maintenance Standards (Exhibit B). SFBR-MI shall bear the expense of the initial rehabilitation of the Track and Track Support Structures as may be required. As long as the Leased Premises are exclusively used for rail freight service, SFBR-MI shall perform such rehabilitation, restoration and replacement of the Track and Track Support Structures (including without limitation maintenance of bridges, other than the “Causeway”) over and above normalized maintenance as is required to maintain the Track and Track Support Structures to a safe and useable condition clear of weeds, garbage and obstructions.

SECTION 3.05 - SFBR-MI shall comply with all laws affecting the Leased Premises or requiring any alterations or improvements to be made thereon; shall not commit or permit waste thereof; shall not commit, suffer, or permit any act upon the Leased Premises in violation of law and shall do all other acts which from the character or use of the Leased Premises for rail freight operations may be reasonably necessary, the specific enumeration herein not excluding the general. Without limiting the generality of the foregoing, and hereof, SFBR-MI expressly agrees that it shall perform all trash, waste and weed and waste abatement as required by law and as additionally specified in the attached Maintenance Standards (Exhibit B) in connection with the freight operations on the Leased Premises.

SECTION 3.06 - City shall have the right during normal business hours, upon reasonable notice and from time to time to inspect the Leased Premises for conformity with the standards of maintenance contained in this Lease Agreement; provided, that such inspections shall not unreasonably interfere with SFBR-MI's operations; that all persons conducting such inspections shall execute appropriate release of liability waivers; and that SFBR-MI or its appointed representative shall accompany City or its representatives during such inspections. In the event that as a result of City's inspection of the Leased Premises it is determined in the reasonable judgment of City that any Track or Track Support Structure or any other facility fails to meet the standard of maintenance required by this Lease Agreement, City shall so advise SFBR-MI of the steps necessary to bring the Track, Track Support Structure or other facility into conformity with the applicable standard of maintenance. Thereafter, SFBR-MI shall have a reasonable period of time, such time to be mutually agreed upon, within which to take such corrective action.

SECTION 3.07 -

(a) **SFBR-MI** shall maintain such full and complete records of all maintenance, rehabilitation, track relocation or removal performed on the Leased Premises as shall reasonably be required by City and shall keep all track profiles and track charts up to date so as to show all program maintenance and rehabilitation performed on the Track and Track Support Structures. Copies of updated records and track charts shall be provided by SFBR-MI to City annually not later than September 30th of each calendar year and promptly upon any other reasonable request of City.

(b) **SFBR-MI** shall manage, control and dispatch all rail operations on the Leased Premises.

SECTION 3.08 - SFBR-MI shall provide a copy of all reports of track inspections by Federal Railroad Administration ("**FRA**") or California Public Utilities Commission ("**CPUC**") inspectors to the City Engineer, promptly upon receipt of said reports; the term "reports" shall include all notices or citations alleging deficiencies from FRA track standards.

SECTION 3.09 - In the event that City undertakes to provide passenger operations on the Leased Premises, either directly or through the designation of a passenger service operator, SFBR-MI and City shall enter into an agreement (the "**Coordination Agreement**") that describes in detail the respective rights and obligations of the Parties with respect to maintenance, capital expenditures, dispatching, scheduling of operations and other matters concerning the joint use of the Leased Premises. SFBR-MI and City shall negotiate the Coordination Agreement in good faith so as to ensure that passenger operations have reasonable priority over freight operations, provided that freight service continues to be provided on the Leased Premises in a manner that meets the needs of the shippers on the line, and that passenger operations disrupt SFBR-MI's freight operations to the minimum extent possible.

SECTION IV

LEASE PAYMENTS

SECTION 4.01 - SFBR-MI shall make annual Lease Payments in the amount of \$35.00 per loaded railcar after the first 250 railcars up to 1,000 loaded railcars in any calendar year, and \$45.00 per loaded railcar for all railcars above 1,000 railcars. This amount shall be adjusted on July 1st of each year following execution of this Agreement by the Annual Average Percentage increase in the U.S. Department of Labor Consumer Price Index for the San Francisco-Oakland-San Jose Area for the preceding calendar year.

SECTION 4.02 -- SFBR-MI shall make all Lease Payments, and all other payments required by this Lease Agreement, to City at the following mail address, or at such other location or to such individual as may be designated by City in writing from time to time:

City of Vallejo
Attn: City Manager
555 Santa Clara Street
Vallejo, CA 94590

By the 10th of every month, SFBR-MI shall provide City with a summary of the monthly car loadings for the previous month, and SFBR-MI shall pay the City the amount due for that month.

SECTION 4.03 - If SFBR-MI fails to pay any installment of rent or any other payment required hereunder when due, and such failure continues for thirty (30) days, SFBR-MI shall pay interest at the lower of the annual rate of 2% over the prime rate of BANK OF AMERICA, N.A. or the highest annual rate allowed by law, in effect on the day the rent or other payment was due, which interest shall accrue from the due date until the date of payment.

SECTION 4.04 -- Acceptance by City, its successors, assigns or designees of rent or other payments shall not be deemed to constitute a waiver of any provision of this Lease Agreement.

SECTION V

CONDITIONS PRECEDENT

The following are conditions precedent to the commencement of SFBR-MI's rail freight operations hereunder:

SECTION 5.01 – The parties agree that the Leased Premises meet the standard set forth in the attached Maintenance Standards (Exhibit B) and that it is SFBR-MI's responsibility to continually meet those standards for the duration of this Agreement.

SECTION 5.02 - SFBR-MI shall have obtained the necessary authority or exemption from the STB to become a Class III rail and from the STB to conduct rail freight service over the Track and Track Support Structures located on the Leased Premises, and shall have obtained such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

SECTION 5.03 - City and SFBR-MI shall not be prevented from fulfilling their respective obligations under this Lease Agreement as a result of legislative, judicial or administrative action.

SECTION 5.04 - No substantive condition unacceptable to SFBR-MI or to City shall have been imposed in connection with the regulatory approvals, authorizations and exemptions contemplated by Section 5.02.

SECTION 5.05 - SFBR-MI shall have provided satisfactory documentation showing its compliance with the insurance requirements of Section 10.02.

SECTION 5.06 - Each Party's representations and warranties shall be true and correct in all material respects, and each Party shall have performed its covenants hereunder to the extent such covenants are required under this Lease Agreement to be performed prior to the Commencement Date.

SECTION 5.07 - SFBR-MI shall not have discovered any contract, agreement, award, judgment, title defect or condition of the Leased Premises which would prevent SFBR-MI from operating a rail freight operation on the Leased Premises as contemplated under this Lease, or which would have a material, adverse effect on SFBR-MI's business plan. Upon execution hereof, City shall make available for SFBR-MI's inspection and review all contracts, agreements, documents, records and correspondence, including but not limited to items relating to environmental matters, pertaining to or affecting the Leased Premises. SFBR-MI shall notify City in writing within thirty (30) days from date of execution hereof whether or not its review of City's records and the Leased Premises have satisfied this condition precedent. Failure to so notify City shall be deemed a satisfaction of this condition. During the thirty (30) day period following the date of this Lease Agreement, City shall provide SFBR-MI with access to City's books and records concerning the Leased Premises and to the real property that comprises the Leased Premises. Without limiting the foregoing, SFBR-MI may conduct at its own expense such environmental tests on the Leased Premises as it deems necessary; provided, however, SFBR-MI may not provide such test results to any party without the prior written consent of City.

SECTION 5.07 - SFBR-MI shall be satisfied that it has adequate rail access to service all industrial customers on Mare Island without unreasonable physical or economic constraints.

SECTION 5.08 SFBR-MI shall be satisfied with the condition of title to the entire track.

SECTION VI

ACCOUNTING AND REPORTING

SECTION 6.01 – SFBR-MI shall submit a yearly report, due on July 30th of each year, showing its total car loadings and movements in support of the amount proffered as lease payments, pursuant to section IV, for the preceding year. City and its agents shall have the right at any time upon reasonable notice to inspect SFBR-MI's records, bills of lading, or any other relevant reports or supporting documents or materials necessary to determine compliance with any provisions of this Lease Agreement. Such inspection shall be conducted during normal business hours and SFBR-MI shall make its facilities available to City's inspectors to permit such inspection without undue interference with SFBR-MI's operations. Any direct expense arising from the inspection shall be borne by City.

SECTION VII

MODIFICATIONS AND IMPROVEMENTS

SECTION 7.01 - SFBR-MI shall not use nor permit the use of the Leased Premises in any manner that will tend to create waste or a nuisance or would materially interfere with the continued commercial, industrial or transportation corridor uses of the Leased Premises. In using the Leased Premises, and in constructing, maintaining operating and using the Track and Track Support Structures, SFBR-MI shall comply with any and all requirements imposed by applicable federal or state statutes, local ordinances, orders or regulations or any governmental body having jurisdiction there over.

SECTION 7.02 - Subject to Section III hereof, SFBR-MI may construct or relocate sidetracks or industrial spur tracks on the Leased Premises as required in the ordinary course of business so long as such work is done in conformity with applicable governmental regulations. Sidetracks or industrial spurs in place on the Leased Premises as of the Commencement Date may not be removed from the Leased Premises without consent of City, which consent will not be unreasonably withheld and in the event any tracks are removed and track materials sold for salvage, the net proceeds (after removal costs) of such sale shall belong to City unless otherwise agreed to in writing except in cases where track is replaced with improved track and the proceeds of the sale of scrap materials are used entirely as part payment for such improvement or where scrap materials are used elsewhere on the system, including the rail lines on Mare Island; provided that SFBR-MI may remove sidetracks and industrial spurs it installs on and after the Commencement Date, and retain the proceeds from the sale of such materials, without obtaining the prior consent of City.

SECTION VIII

REPRESENTATIONS AND WARRANTIES

SECTION 8.01 - City represents and warrants that, as of the date hereof and of the Commencement Date:

- (a) It is a municipal corporation duly organized, validly existing in the State of California.
- (b) It has full statutory power and authority to enter into this Lease Agreement and to carry out the obligations of City hereunder.
- (c) This Lease Agreement and the Related Agreements have been duly authorized, executed and delivered by City and are the legal, valid and binding agreements of City, enforceable against City in accordance with their terms.

SECTION 8.02 - SFBR-MI represents and warrants that, as of the date hereof and as of the Commencement Date:

- (a) It is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware and able to do business in the State of California.

- (b) It has full power and authority to enter into this Lease Agreement, and subject to necessary regulatory authority, to carry out the obligations of SFBR-MI hereunder.
- (c) SFBR-MI has satisfied itself as to the state of title to the Leased Premises, the physical condition of the Leased Premises and their suitability for the uses proposed by SFBR-MI. In so doing, SFBR-MI has relied solely upon its own inspection and investigation and not upon any representation or warranty made or furnished by City or any of its agents or other representatives, except as expressly stated in any representation or warranty contained in this Lease Agreement.

SECTION IX

OBLIGATIONS OF THE PARTIES

SECTION 9.01 - Except as provided below, during the term hereof, SFBR-MI shall pay all bills for utilities, including without limitation those for water, sewer, gas and electric service to the Leased Premises. If the Leased Premises are not billed separately but as a part of a larger tract or parcel, SFBR-MI shall pay that portion of such bills as is attributable to usage on or in connection with Leased Premises.

SECTION 9.02 - SFBR-MI shall at its sole cost and expense protect and defend City's title against all persons claiming against or through SFBR-MI and at all times keep the Leased Premises free from any legal process or encumbrance whatever, including without limitation mechanics, and execution liens, attachments and levies (except any created by or under or through City), and shall give City immediate written notice of any such legal process or encumbrance and shall indemnify, defend, protect and hold harmless City from same and from any loss caused thereby, except those arising prior to the Commencement Date.

SECTION 9.03 - During the term of the Lease Agreement, SFBR-MI shall substantially comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the Leased Premises, including but not limited to those controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. Except to the extent that such activities are the sole responsibility of City, SFBR-MI, at its sole cost and expense shall make all modifications, repairs, or additions to the Leased Premises, and implement and bear the expense of any and all fencing, structures, devices, equipment, or any remedial or monitoring actions which may be required under any such laws, rules, regulations, ordinances, or judgments, which if attached to the land shall become owned by City; provided, however, that except in cases in which the fencing, structure, device, equipment or remedial or monitoring actions are required as a result of an act or omission of SFBR-MI that is contrary to law or SFBR-MI's undertakings hereunder, the cost of same shall be subject to Section 3.03 hereof. During the term of this Lease Agreement, neither Party shall dispose of hazardous wastes of any kind on the Leased Premises. SFBR-MI shall not handle or store hazardous waste or hazardous substances or rail cars containing the same on the Leased Premises other than as may be used by SFBR-MI in its operations in the normal course of business or as may be transported by SFBR-MI in its capacity as a common carrier by rail.

Without limiting the generality of the foregoing, the following obligations are due to the City:

- 1) At each location that SFBR-MI parks its locomotives for overnight storage or longer, it shall implement appropriate contamination containment procedures with respect to fuel drippings within three (3) months after the Commencement Date.
- 2) SFBR-MI may not store, park or leave any rail car containing any hazardous waste or hazardous substance for any length of time on the Leased Premises beyond what time is necessary for the normal transportation of such rail car, but in no event longer than 7 days.
- 3) SFBR may not store, park or leave any rail car (which does not contain hazardous substances or hazardous waste) on the Leased Premises for more than 7 days under any circumstances.

SECTION 9.04 - California law requires the disclosure of the presence or potential presence of certain Hazardous Materials. Accordingly, SFBR-MI is hereby advised that Hazardous Materials (as herein defined) may be present on or near the City Track, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and materials commonly used in construction of rail track containing chemicals, such as lead and formaldehyde. Further, as required by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 120(h)(1) and 120(h)(3) and implemented by 40 Code of Federal Regulations 373.3, this subsection provides the required Hazardous Substances Notification for Zone 19, which contains the City Track. The following known Hazardous Materials is present on the property: Lead based paint, as further described in the Finding of Suitability to Transfer for Zone 19 (Railroad Spur) prepared by the Department of the Navy, Final, December 17, 1999, a copy of which has been delivered to or made available to SFBR-MI. By execution of this Rail Agreement, SFBR-MI acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. SFBR-MI must disclose the information contained in this Subsection to any sub licensee, licensee, transferee, or assignee of SFBR-MI's interest in this City Track. SFBR-MI also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

SECTION XX

INDEMNIFICATION AND INSURANCE

SECTION 10.01 - Railroad's Indemnity

(a) Indemnity and Exculpation. SFBR-MI shall indemnify and hold City, including, but not limited to, its Council and all its members, boards, commissions, departments, agencies, and other subdivisions and their respective employees and agents (collectively, "**Indemnified Parties**") harmless from, and, if requested, shall defend them, with counsel approved by indemnified parties, without cost to the Indemnified Parties, against any and all liabilities, injuries, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind ("**Claims**"), arising directly or indirectly out of: (a) any accident, injury to or death of any person, including

any agents and/or invitees of SFBR-MI, or loss or damage to or destruction of any property occurring in, on or about the City Track as a result of SFBR-MI's use or operations or (b) any default by SFBR-MI in the observance or performance of any of the terms, covenants or conditions of this Rail Agreement, or (c) the use or manner of use of the City Track or the activities therein by SFBR-MI, its agents, or invitees, or (d) any construction or other work undertaken by SFBR-MI on the City Track, or (e) any acts, omissions or negligence of SFBR-MI, its agents or invitees, in, on or about the City Track or (f) any residual common carrier liability imputed to the City except where a adverse abandonment petition is brought against SFBR-MI by the City, which SFBR-MI opposes.

(b) **Hazardous Materials Indemnity.** SFBR-MI shall indemnify, defend and hold the Indemnified Parties harmless from, without cost to the Indemnified Parties, any and all Claims which arise during or after the term of this Rail Agreement as a result of the presence, Handling, Release, or threatened Release of Hazardous Materials by SFBR-MI from, on or about the Leased Premises during SFBR-MI's use of the Leased Premises, except where such presence is caused by the sole negligence or willful misconduct of the Indemnified Parties and SFBR-MI has not exacerbated the Hazardous Material condition. SFBR-MI's obligation to indemnify, defend and hold the Indemnified Parties harmless shall include without limitation, all costs of investigating and remediating the same, damages for diminution in the value of the affected City property surrounding the Leased Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Leased Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of Claims, attorneys' fees, consultant fees and expert fees.

This indemnification of the Indemnified Parties by SFBR-MI includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by City or required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater in, on, under or about the affected City property surrounding the City Track which Hazardous Materials were introduced or Released in, on, under or about the affected City property surrounding the City Track beginning during SFBR-MI's occupancy, except where such presence is caused by the sole negligence or willful misconduct of the Indemnified Parties. SFBR-MI's obligation to indemnify, defend and hold the Indemnified Parties harmless shall include without limitation, any and all causes in which SFBR-MI had whole or partial responsibility SFBR-MI's obligations hereunder shall survive the expiration or earlier termination of this Rail Agreement.

(c) **General Indemnity Provision.** Except as explicitly provided below in Subsection B, the indemnification obligations of SFBR-MI set forth in this Rail Agreement shall be enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The indemnification obligations of SFBR-MI set forth in this Rail Agreement shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Rail Agreement. The indemnification obligations of SFBR-MI set forth in this Rail Agreement includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties except as explicitly provided below in **Subsection 4**. The indemnification obligations of SFBR-MI set forth in this Lease Agreement shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties

which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, SFBR-MI, its Agents or Invitees.

(d) **Defense of Claims.** In addition to SFBR-MI's obligation to indemnify the Indemnified Parties, SFBR-MI specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the indemnification obligations of SFBR-MI set forth in this Lease Agreement, even if the allegations are or may be groundless, false or fraudulent. SFBR-MI's obligation to defend, with defense counsel to be approved by City, shall arise at the time such claim is tendered to SFBR-MI by the Indemnified Parties and shall continue at all times thereafter.

(e) **Scope of Indemnification.** The indemnification obligations of SFBR-MI set forth in this Lease Agreement shall include without limitation, indemnification from all Claims. This indemnification by SFBR-MI shall begin from the first notice that any claim or demand is or may be made. The provisions of this Article XIX shall survive the expiration or earlier termination of this Rail Agreement.

(f) **Exculpation.** SFBR-MI, as a material part of the consideration to be rendered to City, hereby waives any and all Claims against the Indemnified Parties and agrees to hold the Indemnified Parties harmless from any Claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about City Track for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by the Indemnified Parties.

(g) **Limits of Indemnity Obligations.** The Indemnified Parties shall not be responsible for or liable to SFBR-MI, and SFBR-MI hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the City Track by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining City properties or of other City tenants that are served by SFBR-MI, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective systems, and (v) any other acts, omissions or causes, except where the presence of any of the above conditions have preceded the Commencement Date. Nothing in this Article XIX shall relieve the Indemnified Parties from liability caused by the sole gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

(h) **Attorney's Fees.** It is the express intent of City and SFBR-MI that SFBR-MI shall protect, defend, hold harmless, and indemnify City from and against any and all demand, liability, damage, expense, cost, claim or suit, including reasonable attorney's fees (collectively, "**Liability**"), incurred by or assessed against City, its agents, employees, affiliated companies and its successors and assigns on account of injuries, death, or property loss or damage arising from (i) SFBR-MI's use, operation or maintenance of the Leased Premises, (ii) failure by SFBR-MI to perform any of its covenants under this Lease Agreement, (iii) failure of any representation or warranty of SFBR-MI under this Lease Agreement to be true and correct in all material respects as of the date made;

SECTION 10.02 - SFBR-MI shall, at its sole cost and expense, procure the following kinds of insurance, maintaining them for the term of this Lease Agreement effective on Commencement Date and promptly pay when due all premiums for that insurance. Upon the failure of SFBR-MI to maintain insurance as provided herein, City shall have the right after giving SFBR-MI ten (10) days written notice to obtain insurance and SFBR-MI shall promptly reimburse City for that expense. The City of Vallejo, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects; liability, including defense costs, arising out of activities performed by or on behalf of SFBR-MI; products and completed operations of SFBR-MI; premises owned, occupied or used by SFBR-MI; or automobiles owned, leased hired or borrowed by SFBR-MI. The following minimum insurance coverage shall be kept in force during the term of this Lease Agreement, which SFBR-MI must maintain in force, during the full term of this Lease Agreement:

1. Comprehensive Railroad Liability Insurance: \$5,000,000
2. Automobile Liability Insurance: \$1,000,000
3. Worker's Compensation; Employer's Liability: \$1,000,000
4. Railroad Protective Liability: \$5,000,000
5. Contractor's Pollution: \$5,000,000
6. Professional Legal Liability Insurance: \$5,000,000.

SECTION 10.03- Compliance with City's Risk Manager's Requirements. SFBR-MI shall not do anything, or permit anything to be done, unless compelled by applicable law, in or about the City Track that would be prohibited by or would not be covered by the insurance policies then in place or subject City to potential liability. SFBR-MI shall faithfully observe, at no cost to City, any and all requirements of City's Risk Manager with respect to SFBR-MI's use of the City Track, so long as such requirements do not unreasonably interfere with SFBR-MI's use of the City Track or are otherwise connected with standard prudent commercial practices and Industry Standards.

SECTION 10.04 - SFBR-MI shall furnish to City certificates of insurance evidencing the required coverage and endorsement(s) and upon written request of City, SFBR-MI shall provide certified duplicate copies of any policy. The insurance company(ies) issuing such policy(ies) shall notify City in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregation limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

SECTION 10.05 - The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to City or with current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the State of California. If requested, SFBR-MI must furnish a certified copy all insurance policy(ies) and endorsement(s) to City within seven (7) days of such request.

SECTION XI

TERMINATION

SECTION 11.01 - This Lease Agreement may be terminated as follows:

(a) By either City or SFBR-MI upon not less than forty-five (45) days' written notice following SFBR-MI's obtaining all necessary regulatory approvals or exemptions to permit SFBR-MI to discontinue or abandon rail freight operations and otherwise in accordance with Section 3.02; and (2) pursuant to Section XVIII; and

(b) By City or SFBR-MI, as applicable, prior to the Commencement Date, for nonfulfillment of a condition precedent in accordance with Section V hereof. .

SECTION 11.02 - In the event of expiration or termination of this Lease Agreement, SFBR-MI shall vacate the Leased Premises in an orderly manner.

SECTION 11.03 - SFBR-MI shall be able to cure an Event of Default (other than lack of insurance) by remedying the Event of Default within the respective notice period stated herein.

SECTION 11.03 - Upon expiration or earlier termination of this Agreement, SFBR-MI shall leave the Leased Premises in a neat and clean condition satisfactory to City and free of all personal property of SFBR-MI. All repairs, alterations and/or other improvements made by SFBR-MI shall become the property of City, provided that City may, by written notice given to SFBR-MI on not less than 10 days prior to the expiration or termination of the Agreement, require SFBR-MI to remove any such alterations and improvements from the Leased Premises and to restore the Leased Premises to their original condition prior to termination of this Agreement which will be extended for a reasonable period to provide time to meet that condition.

SECTION XII

CITY'S RESERVED RIGHTS

SECTION 12.01 - City excepts from the Leased Premises and reserves unto itself, its successors and assigns, the following exclusive rights with respect to the Leased Premises (provided, in each case that City or any person or entity claiming through City, shall not materially interfere with SFBR-MI's freight railroad operations on the Leased Premises or increase the expense, cost or liability of SFBR-MI in the exercise of such rights; that City shall provide SFBR-MI with reasonable prior written notice of the exercise of the reserved rights; that upon request of SFBR-MI, City shall meet with SFBR-MI to discuss the proposed exercise of City's reserved rights so as to minimize the effect of such exercise on rail freight operations on the Leased Premises; and that City shall ensure, upon request of SFBR-MI, that all persons exercising such rights provide to SFBR-MI an appropriate written release of liability:

(a) The right to construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities, and transportation systems necessary for and related to passenger rail operations so long as such actions do not unreasonably interfere with the operations of SFBR-MI. City reserves the right to contract with SFBR-MI on mutually acceptable terms, or with a third party or third parties, for the operation of passenger rail service and liability will be specified in a future Cooperative Agreement. City shall be entitled to all revenues derived from all current and future agreements to which City is a party affecting passenger rail operations.

(b) The right to use all minerals and mineral rights, interests, and royalties, including, but not limited to, oil, gas and other hydrocarbon substances, timber, and metallic or other solid minerals, in and under the Leased Premises.

(c) The right to own, construct, reconstruct, maintain, operate, use and remove existing and future pipelines, communication systems, signboards and related facilities of every kind and nature, including, but not limited to, all existing pipelines and telephone, telegraph, television and fiber optic lines, signboard structures and related equipment and appurtenances.

(d) The right to use the Leased Premises for any other reasonable commercial, industrial or utility-related purpose (other than as a freight railroad), including, without limitation the right to enter into leases, easements, licenses or leases in respect of the Leased Premises for longitudinal or transverse occupancies or crossings, including the right to make its track available for the operation of rail passenger service on the Leased Premises. Subject to this agreement, City may seek to have either SFBR-MI or a heretofore-unknown third party (Rail Passenger Service Provider, hereinafter 'RPSP'), assist the City by providing rail passenger service on the Leased Premises on terms and conditions mutually acceptable to City, RPSP and SFBR-MI. SFBR-MI shall not withhold its acceptance of conditions unreasonably.

(e) A limited right-of-way and right of access across the Leased Premises, for purposes of the exercising any rights with respect to the Leased Premises as set forth in this Section 15.01 except that the City will be responsible for the full cost of installation of any new road crossings of the railroad and for the installation of safety equipment required or desirable for such crossing and no crossing may be installed in a location which materially interferes with the efficient operation of the railway or which creates a significant safety risk.

(f) Except as expressly set forth in this Lease Agreement, all improvements presently existing on or hereafter constructed on the Leased Premises shall remain the property of City. City shall be entitled to all revenues derived from all current and future agreements to which City is a party affecting the Leased Premises.

(g) The right to ensure, coordinate and maintain the flow of traffic along existing and future ways, streets, and thoroughfares, over, across and on the Leased Premises, including across Wichels Causeway, where the Leased Premises overlap an existing vehicular, bicycle and pedestrian traffic flow pattern, which Parties understand is meant to continue and co-exist with this Lease Agreement. SFBR-MI operations across the Wichels Causeway shall not be conducted between the following peak travel hours:

1. Between 7:00 a.m. and 9:30 a.m. in the morning.
2. Between 4:30 p.m. and 7:00 p.m. in the evening.

(h) To manage, coordinate and maintain the Wichels Causeway Bridge, elevating and lowering such to permitting the flow of marine traffic underneath and through. To that end, SFBR-MI will, in good faith, coordinate with and meet all signaling and traffic requirements and any other applicable standard to aid in the flow of traffic across the Wichels Causeway, and elsewhere along the Leased Premises.

SECTION XIII

DEFAULT/REMEDIES/FORCE MAJEURE

SECTION 13.01 - Default of SFBR-MI. In the event that SFBR-MI shall fail to comply with or carry out any term, covenant, condition, or promise herein set forth, the City may elect to serve upon SFBR-MI a Notice of Default. If SFBR-MI fails to cure such default within five (5) days after receipt of said notice, or, if such default cannot be cured within such period and SFBR-MI does not commence to cure within such five (5) days and thereafter diligently pursue such cure to completion, then the City may elect to terminate this Agreement or, in the alternative, may cure the default (directly or indirectly) and bill SFBR-MI for all expenses incurred. If the City elects to terminate the Agreement, the termination shall be effective after a ten (10) day written notice to SFBR-MI.

(a) **Actual Damages.** In the event that the City elects not to serve a notice of termination of this Agreement or if such Notice is served but SFBR-MI's default is cured, then the City shall be entitled to recover from SFBR-MI any loss or damages which it may have incurred by reason of SFBR-MI's default.

(b) **Bankruptcy/Insolvency of SFBR-MI.** To the extent allowed by applicable law SFBR-MI shall be deemed to be in default of this Agreement in the event that SFBR-MI shall cease conducting business in the normal course and become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver which receiver fails to continue service or fails to adopt this agreement and/or shall otherwise avail itself of, or become the debtor in any proceeding under the Federal Bankruptcy Act or any other statute of any state of the United States or any other foreign country relating to the insolvency or the protection of rights of creditors, then at the option of the City should the receiver not continue service and then adopt this agreement and continue service within thirty days, this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to the City. Upon the occurrence of any of the foregoing events, the City shall have the right to terminate this Agreement forthwith and SFBR-MI, or its successor in interest by operation of law or otherwise, shall have no rights in or to this Agreement or to any of the privileges herein conferred other than to remove its equipment from the premises in an orderly fashion.

SECTION 13.02 Remedies. In the event that the City serves a Notice of Default on SFBR-MI and such default is subsequently cured, the City shall nevertheless be entitled to recover from SFBR-MI any loss or damage which the City actually incurred by reason of such default. The City shall have available to it the remedies provided for in this section as well as all remedies available in law and equity, to resolve its claim for loss or damage.

(a) **Rights of Parties Accrued Prior to Termination.** Termination of this Agreement shall not in any way affect the rights and obligations of the parties with respect to damages or amounts payable to the other party, which have accrued prior to such termination.

(b) **Other Remedies.** The exercise of the remedies provided for in this Agreement shall be cumulative and shall in no way affect any other remedy the parties may have available in

law or equity. The exercise by either party of any of the options set forth in this paragraph shall not be deemed a waiver of its right to exercise any other option provided herein.

SECTION 13.03 Excuses from Performance due to Force Majeure. Neither SFBR-MI nor the City shall be excused from the performance of its obligation under this Agreement but the performance may be suspended due to an event of Force Majeure. Any suspension of performance by SFBR-MI or the City pursuant to this Article shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious and commercially reasonable manner to remedy its inability to perform, and mitigate damages that may occur as result of the event. The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice required by this section shall be given no later than five (5) calendar days after the occurrence of the event. Such notice shall describe in detail the event of Force Majeure claimed, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and other information as the other party reasonably requests. SFBR-MI

SECTION 13.04 - SFBR-MI shall have no obligation to operate over any portion of the Leased Premises as to which it is prevented or hindered from operating due to Acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control; provided, however, SFBR-MI shall use reasonable efforts to take whatever action is necessary or appropriate to be able to resume its operations.

SECTION XIV

MISCELLANEOUS

SECTION 14.01 - This Lease Agreement contains the entire agreement between the Parties and supersedes all prior oral or written agreements, commitments, or understanding with respect to the matters provided for herein, and no modification of this Lease Agreement shall be binding upon the Party affected unless set forth in writing and duly executed by the Party to be charged.

SECTION 14.02 - All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either Party to the other pursuant to this Lease Agreement shall be in writing and shall be deemed to have been properly given or sent:

If intended for City, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by national overnight delivery service, prepaid, addressed to City at:

City Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

If intended for SFBR-MI, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by national overnight delivery service, prepaid, addressed to SFBR-MI at:

San Francisco Bay Railroad
100 Cargo Way
San Francisco, CA 94124
Attention: Vice President-Operations

SECTION 14.03 - Each notice, demand, request or communication which shall be mailed by registered or certified mail to either Party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request, or communication shall be either received by the addressee or refused by the addressee upon presentation. Either Party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 14.04 -- This Lease Agreement shall be binding upon and inure to the benefit of City and SFBR-MI, and shall be binding upon the successors and assigns of City and SFBR-MI, subject to the limitations hereinafter set forth. SFBR-MI may not assign its right under this Lease Agreement or any interest therein, or attempt to have any other person assume its obligations under this Lease Agreement, without the prior written consent of City, which consent may be withheld in City's sole discretion. Prior to any proposed assignment, SFBR-MI shall secure any necessary approvals of the STB and such other regulatory approvals as may be then required. Nothing in this Section 14.04 shall affect City's right to terminate this Lease Agreement

SECTION 14.05 – SFBR-MI may terminate this Lease Agreement by giving six months' written notice to the City. In such event, SFBR-MI shall apply for, pay for and obtain from the STB and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approval or exemption from regulation for such discontinuance of operations over the Leased Premises or portion thereof; SFBR-MI shall not seek any such regulatory authority or take any action to suspend or discontinue its operations on the Leased Premises, as of a date prior to the expiration or termination of this Lease in accordance with its terms, without first receiving written concurrence from City.

SECTION 14.06 - If any action is brought to enforce the terms of this Lease Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees from the other Party as part of the prevailing Party's costs, the amount of which fees shall be fixed by the court and shall be made a part of any judgment rendered. The "**prevailing Party**" will be the Party that prevails in obtaining the remedy or relief that most nearly reflects the remedy or relief that such Party sought.

SECTION 14.07 – SFBR-MI shall be responsible for all real property or possessory interest taxes, bonded or special assessments, which may be levied, assessed, or imposed on the Leased Premises.

IN WITNESS WHEREOF, the Parties have caused this Lease Agreement to be executed in duplicate as of the day and year first herein written.

San Francisco Bay Railroad-Mare Island, Inc.

By: _____

Name/title

DATE: _____

(City Seal)

CITY OF VALLEJO,

A municipal corporation

By: _____

Robert F.D. Adams

Interim City Manager

DATE: _____

ATTEST:

By: _____

Susan M Jusaitis, Interim City Clerk

APPROVED AS TO CONTENT:

Craig Whittom

Assistant City Manager/Community Dev.

Exhibit M

SFBR-MI Letter to LMI Confirming Initial Discussions



October 28, 2009

Mr. Tom Sheaff, Senior Vice President
Lennar Mare Island, LLC
690 Walnut Avenue, Suite 100
Mare Island, Vallejo, CA 94592

Dear Tom:

First of all, a belated thank you for taking the time to meet a few weeks ago with me and Jacob Park of SFBR, and Telly Sionedes of Alstom TLS. Since meeting with you we have been moving forward with our plans to begin providing rail service to Alstom on Mare Island. We hope to move the first Amtrak railcars into their repair facility within the next two weeks. We have also met with City of Vallejo officials, and have entered into an interim agreement with the City so that we can begin running over their line from Flosden to Mare Island. Under that agreement, we will be responsible for repairs and maintenance along the tracks. We have already begun making repairs and cleaning up the tracks so that we're ready for the first movement of cars.

As follow-up to meeting with you, I am forwarding the attached informational piece about SFBR. We are very much looking forward to working with you and the Lennar team in providing rail service to Alstom and Mare Island. We believe we can add value to Lennar's industrial portfolio on Mare Island by offering your tenants a transportation option that will help their businesses in the short and long-term. This, in turn, should add an "arrow to the quiver" of Lennar's Mare Island industrial property marketing efforts. The transportation of freight by rail has some compelling benefits:

- ✓ Reduced wear and tear on city streets, highways and bridges
- ✓ 16 times safer than trucking, according to USDOT
- ✓ Reduced fuel usage by up to 90%
- ✓ Each rail ton moves 436 miles on 1 gallon of fuel; truck ton moves only 80 miles
- ✓ Reduced air emissions by up to 90%
- ✓ More economical way of moving heavy tonnages over long distances.

Please let me know if there is any other information you need about SFBR. We would love to host you for a tour of our Port of San Francisco facilities at your convenience. Please don't hesitate to contact me if you have any questions about or ideas for our rail service on Mare Island.

Sincerely,

A handwritten signature in black ink, appearing to read "David Gavrich", followed by a horizontal line.

David A. Gavrich
President & CEO

Exhibit N

LMI's Refusal To Allow Common Carrier Service



January 29, 2010

Mr. David Gavrich
President & CEO
San Francisco Bay Railroad
100 Cargo Way, Pier 96 Railyard
San Francisco, CA 94124

Re: Mare Island, Vallejo, CA

Dear David,

During our meeting on January 11, 2010 with the City of Vallejo, we discussed and reviewed many outstanding issues related to our mutual goal of restoring rail service to Mare Island. We have also reviewed SFBRR's latest draft agreement, sent to LMI on January 14, 2010. We were disappointed that most of the concepts and proposed compromises that we discussed on January 11 were not included.

As a result, LMI has no alternative but to arrange for service by another operator who will operate on Mare Island in a manner that is compatible with the Specific Plan for the development of Mare Island, the needs of all stakeholders, LMI's tenants and others using LMI's property to send and receive shipments via rail car.

As there is no longer any prospect of an agreement between LMI, as owner of the rail trackage on Mare Island, and SFBRR providing SFBRR with any right to access or operate over that trackage, we must insist that you withdraw the Notice of Exemption you filed with the Surface Transportation Board on September 28, 2009, in Finance Docket No. 35304 as it relates to trackage on Mare Island. If you do not do so by February 12, 2010, LMI will petition Surface Transportation Board to revoke that exemption in its entirety because it was false and misleading. Thank you in advance for your attention to this issue.

I am available to discuss any additional issues.

Sincerely,


Tom Sheaff
Lennar Mare Island LLC

cc: Craig Whittom, City of Vallejo

LENNAR MARE ISLAND

690 Walnut Avenue, Suite 100 Mare Island, Vallejo, California 94592
707.562.4000 Phone 707.562.4002 Fax

Exhibit O

E-mail from Randolph Peterson, T&O Railroad

From: Randolph Peterson <rvpeterson@mac.com>
Subject: Information Request SFBR 2-17-10
Date: February 18, 2010 1:00:26 AM PST
To: Jake Park <jacob@sfbayrail.com>
Cc: Tom Sheaff <Tom.Sheaff@lennar.com>

Jake Park
Manager of Operations
San Francisco Bay Railroad

Jake, it was a pleasure to visit with you by telephone earlier today and yesterday. Lennar Mare Island, LLC. (LMI) owns certain railroad track on Mare Island connecting with railroad track owned by the City of Vallejo at a point just on the west side of the Mare Island Causeway that crosses Mare Island Straight. It is my understanding the City owns railroad track beginning there and travels easterly for approximately two miles to a point (Flosden Siding) connecting with track owned by the Union Pacific Railroad (leased & operated by California Northern Railroad "CNRR").

It is my understanding that the City of Vallejo has contracted with San Francisco Bay Railroad (SFBR) to operate and maintain this two miles of track it owns.

LMI has contracted with Mare Island Rail Service (MIRS) to manage, maintain and operate the track it owns on Mare Island. LMI has tenants on Mare Island that desire to have rail service available as an option to their present methods of receiving/originating freight.

In order evaluate the rail option, MIRS requests that SFBR provide its tariff rate for moving railcars on the City track, interchanged with CNRR at Flosden Siding. MIRS understands the LMI tenant Alstom will receive railcars from SFBR directly, otherwise all cars would be placed by SFBR on LMI's private industry track beginning at the point of connection just on the west side of the Mare Island Causeway and not past Railroad Avenue (approximately 800'). MIRS will place returning railcars for pickup by SFBR at the same location.

Also, please provide the SFBR demurrage tariff applicable for all railroad owned/marked cars if different than that of CNRR and SFBR's daily service schedule.

Providing this requested information will allow us to better evaluate the economic viability for utilizing rail on Mare Island.

Thank you and we look forward to receiving this requested information at your earliest opportunity.

Sincerely,

Randolph Peterson, Manager
Mare Island Rail Service
509 554 0503
690 Walnut Ave. Suite 100
Mare Island, Vallejo, CA 94592

Exhibit P

E-mail from Earthquake Protection Service

From: Victor <victor@earthquakeprotection.com>
Subject: **Bldg 759 Purchase & Rail Service**
Date: February 1, 2010 6:21:43 PM PST
To: David Gavrich <david@sfbayrail.com>
Cc: Julie Robinson, EPS <Julie@earthquakeprotection.com>, Stanley Low, EPS <stanley@earthquakeprotection.com>

David,

I have reviewed EPS's Parcel D purchase agreement with LMI. There is no provision where EPS agrees to any commitment to procure rail service from LMI.

EPS was a customer of California Northern Railway until LMI increased their "per car charges" for "rail maintenance" to unreasonable rates. I considered the LMI increased charges were not justified by reasonable rail maintenance costs undertaken in the best interests of Mare Island rail users.

Alco's agreement states "for so long as Seller shall elect to continue to provide such rail service". I believe that when LMI stopped providing "such rail service" to Mare Island customers, which they did more than one year ago, Alco was freed from a one-sided commitment in perpetuity to "continue to reimburse Seller for the costs of rail service".

I hope that EPS will be permitted by the City and LMI to procure rail service from San Francisco Bay Railroad on a reasonable cost basis, on par with what we had been paying California Northern Railway.

Best of luck in your efforts.

Sincerely,

Victor Zayas
President, EPS

Exhibit Q

E-mail to City of Vallejo

----- Original Message -----

From: Alfred Bottini – XKT Engineering

To: mayor@ci.vallejo.ca.us ; jschivley@ci.vallejo.ca.us ; sgomes@ci.vallejo.ca.us ; ehannigan@ci.vallejo.ca.us ; hsunga@ci.vallejo.ca.us ; tbartee@ci.vallejo.ca.us ; mwilson@ci.vallejo.ca.us

Cc: wchihak@inrproperty.com

Sent: Thursday, January 10, 2008 4:40 PM

Subject: Rail service on Mare Island

Mr. Mayor and Members of the Vallejo City Council,

We have received notice that Lennar Mare Island will terminate railroad service to Mare Island on March 31, 2008. Between 60 and 1,000 rail cars loaded with steel plate and beams have been delivered by rail each year since we relocated to Mare Island in 1995. Recently, rail access allowed us to team up with Ameron International in Southern California to provide 60,000 tons of steel piles for the New San Francisco Oakland Bay Bridge Skyway. The project lasted two years and provided over \$8,000,000 in payroll to 120 XKT employees and the purchase of over \$6,000,000 in steel plate and services from businesses located in Vallejo and on the west coast. Without rail access between the two plants, neither XKT nor Ameron could have participated and the pile would have been provided by offshore fabricators.

XKT Engineering was recruited by the city as the first tenant on Mare Island with the goal of economic development and job creation. The tools we were offered by the city to accomplish this were the facility we occupy and the access to rail and barge transportation. With these tools we have grown our business and provided steady employment for over 12 years. Without rail access, our raw material will have to ship to Richmond or Sacramento, be transloaded to trucks with oversize loads and then transported to Mare Island. It takes a minimum of four truckloads to transport the equivalent weight of one rail car. This will affect traffic, pollution, noise and fuel consumption, and it will put us at a disadvantage with our competitors who are all out of state or offshore.

An upgraded rail system will ensure continued economic development. Please hold firm in your commitment to develop Mare Island to its fullest capabilities.

Sincerely,
Alfred Bottini
President
XKT Engineering, Inc.

From: telly.sionides@transport.alstom.com
Date: February 23, 2010 1:25:08 PM PST
To: cwhittom@ci.vallejo.ca.us
Cc: cquintana@ci.vallejo.ca.us
Bcc: david@sfbayrail.com
Subject: Rail Service Mare Island / SFBR

Craig,

I just wanted to touch bases one more time on the Mare Island rail service issue.

Alstom has a 2-year agreement with SFBR, and during that period our hope and expectation was that SFBR would serve the entire Island so that it could be an efficient way to maintain the line from Flosden to Alstom. With LMI signing a second railroad service for everyone else but Alstom, us and the other shippers could be paying for an inefficient system (the other shippers will pay both SFBR and the second railroad; Alstom might not get the cost-sharing that we had planned for). That loses critical economies of scale, and I fear that LMI pricing of the service of their second railroad might be such that the other shippers on the Island won't be able to move any cars which, in the end, would adversely affect the city and in turn possibly Alstom.

Please feel free to call me should you want to discuss this further and, should you desire, I will make myself available to come by City Hall for a face to face meeting.

Thank you for your time and attention to this matter.

Best regards,

Telly

Telly Sionides
Site Manager, West Coast Operations
ALSTOM Transportation Inc.
(630) 605-4690 cell
(707) 647-1816 office
(707) 647-7036 fax
telly.sionides@transport.alstom.com
www.alstom.com

Exhibit R

LMI's Proposed Agreement w/SFBR-MI

RAILROAD LICENSE AGREEMENT

This Railroad License Agreement (this “**Agreement**”) dated December __, 2009 is entered into at Vallejo, California as of the Reference Date by and between Lennar Mare Island LLC, a California limited liability company (“**LMI**”) and the Licensee listed below on all of the terms of this Agreement, to which LMI and Licensee agree.

Recitals

WHEREAS, LMI owns certain of real property located at Mare Island, City of Vallejo, County of Solano, State of California, as shown on the site plan attached hereto as Exhibit A as such area may be expanded or reduced from time to time (the “**Site**”). The “**Project**” is comprised of all land, laydown area, berths, buildings, improvements and facilities which now or later are located on parts of Mare Island that are now or hereafter owned by LMI or any successor to LMI, or which is subject to any non-residential owners’ association formed at Mare Island after the date hereof; and

WHEREAS, within the Site, LMI owns certain railroad trackage and the underlying land (the “**Subject Track**”) as shown on Exhibit B-1 located on Mare Island in Solano County in the State of California; and

WHEREAS, certain businesses at the Project or Mare Island ship and/or receive goods by rail; and

WHEREAS, Licensee presently has no right to use the Subject Track; and

WHEREAS, LMI is willing to permit Licensee’s use of the Subject Track within the License Area (defined below), in consideration of Licensee’s agreement hereunder, including Licensee’s agreement to inspect, operate and maintain the Subject Track and the License Area and fully indemnify LMI, all at no cost to LMI.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LMI and Licensee, intending to be legally bound hereby, agree as follows:

Agreement

1. Licensee. San Francisco Bay Railroad, a _____.

(a) [Guaranty. _____, a _____ corporation, shall execute and deliver a Performance and Payment Guaranty in the form of and upon the terms contained in Exhibit G attached hereto and incorporated herein by this reference.]

2. License Area. LMI hereby grants a non-exclusive license to Licensee to use the approximately _____ lineal feet of railroad track on Mare Island extending from the centerline of the track to a distance that is ten (10) feet on either side of such centerline, as shown on Exhibit B-1 attached hereto (including all of the Subject Track, the “**License Area**”) subject to the terms and conditions contained in this Agreement. Licensee consents to the reasonable

alteration by LMI of the boundaries to the License Area in order that they comply, in LMI's judgment, with the parcelization plan being developed on Mare Island. The license granted herein does not operate to confer upon or vest in Licensee any title, interest, or estate in the Subject Track or the License Area.

3. Commencement Date. January _____, 2010.

4. Term and Termination. The Term of this Agreement shall be for a period of _____ (____) months, plus any partial month at the beginning of the Term (the "Term"), commencing on the Commencement Date and ending on the expiration of such period, unless the Term is sooner terminated as provided in this Agreement. Notwithstanding the foregoing, if the Commencement Date falls on any day other than the first day of a calendar month, then the Term of this Agreement shall be measured from the first day of the month following the month in which the Commencement Date occurs plus any partial month at the beginning of the Term.

5. Use; Rules and Regulations. Licensee may use the License Area only for pick up and delivery of rail cars carrying freight only to Project businesses and for no other purpose. Licensee shall not provide passenger service to the Project at any time. Licensee shall also be permitted incidental use of the Common Area; provided, however, Licensee is not granted any parking rights under this Agreement. Licensee shall not permit the use of the License Area by or for the benefit of any person, firm or corporation. Licensee shall observe and comply with the rules and regulations set forth in Exhibit C attached hereto and amended from time to time by LMI (the "**Rules and Regulations**"). Prior to commencement of operations at the Project, Licensee shall obtain all required permits and approvals and shall provide written evidence of the same to LMI.

(a) Disclosure of Temporary Nature of Railroad Operations. Licensee acknowledges that rail service at the Project may be discontinued or interrupted at any time, and specifically acknowledges receipt of the disclosure attached hereto as Exhibit D – Temporary Railroad Operations. Licensee hereby agrees that it shall fully disclose the temporary nature of rail service to Mare Island, and Licensee agrees that it shall, in advance of providing any service to a Mare Island business (each a "User"), enter into a written agreement with each such User. Prior to conducting active business with each such User, Licensee shall provide a written acknowledgement to LMI from such User indicating that such User has received a copy of Exhibit D.

(i) Storage of Rail Cars. No storage of rail cars shall be permitted at the Project except as shown in Exhibit B-3 attached hereto. Said storage to be for no longer than [# of days] for a fee of \$ _____ per rail car per day.

(ii) No Transloading. All freight to be transported by Licensee shall be loaded directly to or from each User's facility to rail cars maintained by Licensee only. Transloading by Licensee and Users is strictly prohibited at the Project.

(b) General. Subject to any use restrictions contained in the Mare Island Final Reuse Plan, Mare Island Specific Plan, the National Environmental Policy Act Records of Decision for the disposal and reuse of the former Mare Island Naval Shipyard, the ESCA, the MIRA and the

Consent Agreement, copies of which are available upon request, as all such documents may hereafter be amended, Licensee shall use the License Area solely for the permitted use specified in this Section 5. LMI shall endeavor to enforce the Rules and Regulations, but shall have no liability to Licensee for the violation or non-performance by any other licensee or occupant of the Project of any such Rules and Regulations. Licensee shall, at its sole cost and expense, observe and comply with all requirements of any board of fire underwriters or similar body relating to the conduct of Licensee's business on the License Area, all recorded covenants, conditions and restrictions now or hereafter affecting the Project (with Licensee expressly acknowledging and understanding that LMI may establish an owner's association within the Project and that such association could, among other things, establish additional covenants, conditions and restrictions on the Project and the License Area, and the association could, among other things, impose reasonable fees on Licensee in connection with Transportation Demand Management Program and other mitigation measures or requirements), any and all requirements and mitigation measures set forth in the Subsequent Environmental Impact Report and Mitigation Monitoring Program dated as of November 30, 2005, and all laws, statutes, codes, rules and regulations now or hereafter in force relating to or affecting the condition, use, occupancy, alteration or improvement of the License Area, including, without limitation, the Federal Railroad Safety Act and other laws administered by the Federal Railroad Administration ("FRA"), as are in existence from time to time, and pursuant to the terms of this Agreement. LMI shall not be responsible or liable for Licensee's violations of such laws or regulations. Licensee shall promptly comply with any specific safety instructions or directions given by any duly authorized agency. Licensee shall notify the FRA that Licensee is responsible for maintenance of the Subject Track. as it pertains to Licensee's use, occupancy, improvement and alteration of the License Area (whether, except as otherwise provided herein, structural or nonstructural, including unforeseen and/or extraordinary alterations and/or improvements to the License Area, regardless of the period of time remaining in the Term). Licensee shall not use or allow the License Area to be used (i) in violation of any recorded covenants, conditions and restrictions affecting the Project or of any law or governmental rule or regulation, or of any certificate of occupancy issued for the License Area, or (ii) for any improper, immoral, unlawful or reasonably objectionable purpose. Licensee shall not do or permit to be done anything which will obstruct or interfere with the rights of other Licensees or occupants of the Project, or injure or annoy them. Licensee shall not cause, maintain or permit any nuisance in, on or about the License Area or the Project, nor commit or suffer to be committed any waste in, on or about the License Area.

(c) Licensee Employment and Local Contracting. During the Term of this Agreement, Licensee hereby agrees to use its best efforts to hire qualified City of Vallejo residents or former Mare Island Naval Shipyard employees for ninety percent (90%) of new positions created on the License Area. Licensee shall, by December 1 of each year, submit to LMI a list of the names and city of residence of its employees and officers, and shall periodically provide information to LMI regarding its workforce. Licensee hereby agrees to use its good faith efforts to contract with City of Vallejo businesses for services and/or products, as necessary. Consistent with LMI's obligations to report employment statistics to the City of Vallejo, Licensee shall, upon request of LMI from time to time (but at least semi-annually), submit to LMI a list of the total number of its full-time employees, part-time employees and contract employees, and a list of the names of its employees who are City of Vallejo residents or former Mare Island Naval Shipyard employees.

(d) Redevelopment Activities. Licensee acknowledges that Mare Island is being redeveloped in connection with its conversion from a former naval shipyard to civilian use. Such redevelopment will involve extensive reconstruction and rehabilitation of buildings, roadways, public facilities and improvements, all of which will produce noise, dust and inconvenience to Licensee (e.g., road barricades). LMI reserves the right to grant easements and rights of way in the future over, under and across the License Area and Mare Island in connection with the foregoing activities and the performance by LMI or others of their current or future obligations relating to the investigation, remediation and removal of Hazardous Materials (as defined herein). LMI's redevelopment and environmental remediation activities may require temporary short term or long redirection of rail access and/or closure of some or all the License Area, and Licensee acknowledges that such closure and LMI's other activities will not constitute a nuisance and shall not be a basis for abatement or reduction of the License Fee or be deemed a violation of Licensee's right to quiet enjoyment of the License Area hereunder. Licensee shall not be entitled to any compensation or damages for loss of, or interference with, Licensee's business or use or access to the License Area resulting from the activities described in this paragraph. Licensee consents to the reasonable alteration by LMI of the boundaries to the License Area in order that they comply, in LMI's judgment, with the development of Mare Island. To the extent that LMI has advance notice of any activities that will materially affect the License Area or Licensee's activities under this Agreement, LMI shall endeavor in good faith to provide advance notice of the same to Licensee.

(e) Archaeological Property. Licensee shall comply with rules and regulations regarding preservation of historic or archaeological property on or about the Project, and Licensee shall comply with all reasonable requests of LMI in connection with the same.

(f) Subsurface Excavation. Licensee shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface on or about any portion of the License Area or the Project without the prior written approval of LMI, which approval may be withheld in LMI's sole and absolute discretion. Licensee shall not cover or disturb groundwater monitoring wells located within the Project.

6. License Fee and Other Charges.

(a) License Fee. Effective on the Commencement Date, Licensee shall pay to LMI, payable in advance on the first day of each month during the Term, and without offset, deduction or demand, _____ Dollars (\$_____) per month (the "License Fee"), plus any partial month at the beginning of the Term.

(b) Improvement District. Licensee acknowledges and agrees that the License Area and/or the Project are, or may be, subject to, and Licensee shall pay for as part of the taxes, any and all current, future, replacement, alternative or successor service district fees, special taxes, assessments, charges and/or improvement levies levied on the License Area, the Project, or the land associated with the License Area or the Project of whatever kind, including, without limitation, Community Facilities District No. 2002-01 formed under Vallejo Municipal Code Chapter 14.45, or any fees, charges, assessments, special taxes or other levies of any kind whatsoever imposed on the License Area, or the land associated with the License Area by any federal, state or local government entity, including, without limitation, any community facilities

district, services district, assessment district, improvement district or other such public financing mechanism established under state law of the Vallejo Municipal Code, or any combination thereof to fund the costs and expenses for municipal and/or private services, maintenance, repairs and/or replacements on Mare Island or related property for Mare Island, including, without limitation, police services, fire protection, security services, Project maintenance, bridge operations/maintenance, roads, street lights, grounds maintenance, water system, sanitary sewer system, storm drain system, mosquito abatement services, waterfront structure maintenance, ground level trackage, refuse collection services, animal control services, water service, sewer service, electrical service, natural gas service, overhead, costs, fees and contingencies related thereto, the Mare Island Causeway and any rail facilities owned by LMI located immediately adjacent to Mare Island. Licensee knowingly and voluntarily agrees to pay, and waives any further notice of the imposition of, any of the foregoing charges for municipal services.

(c) Security Deposit. Licensee shall deposit _____ Dollars (\$_____) with LMI, which shall be held by LMI as security for the performance by Licensee of its obligations under this Agreement. The deposit shall be due upon Licensee's execution of this Agreement. The security deposit is not payment of the License Fee for the last or any other month of the Term. If Licensee defaults with respect to any of its obligations under this Agreement, LMI may use or retain all or any part of the security deposit for the payment of any amount due LMI hereunder or for any other amount, loss or damage which LMI may incur or suffer by reason of Licensee's default, and Licensee accordingly waives the entirety of California Civil Code Section 1950.7, to the extent applicable. Licensee shall not be entitled to interest on the security deposit, and the security deposit is not a limit on Licensee's liability.

(d) Late Charges. Licensee acknowledges that the late payment by Licensee to LMI of any amount due under this Agreement will cause LMI to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impractical to fix. Accordingly, if any payment is not received by LMI by the due date, Licensee shall pay to LMI an additional sum of the greater of (i) Two Hundred Dollars (\$200.00) or (ii) ten percent (10%) of the overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that LMI will incur by reason of any late payment, and the payment of late charges is to compensate LMI for LMI's processing, administrative and other costs.

7. Maintenance. Licensee shall be solely responsible for all inspection, maintenance and repair of all the License Area during the Term and shall be fully responsible for any damage occurring from the use of the License Area. LMI shall not be obligated for any costs or expenses whatsoever regarding the License Area. All material, equipment, trash and refuse belonging to or generated by Licensee shall be removed from the License Area and properly disposed of at Licensee's expense on a daily basis. Without limiting the foregoing, the following maintenance and repair apply:

(a) Licensee's Inspection, Maintenance and Repair Obligations. Licensee shall immediately undertake and cause to be completed a "Licensee Track Inspection" by a mutually agreed on qualified inspector who shall produce a report, setting forth the current condition of the track, together with any deficiencies, recommendations to correct deficiencies on any maintenance plan, which report shall be available to LMI and Licensee as soon as practicable, but in no event later than [one (1) year] from the execution of this Agreement. At all times

during the Term of this Agreement, Licensee, at its sole cost and expense, shall inspect, maintain and repair, replace in good and working order, condition and repair the Subject Track in accordance with all applicable laws, rules and regulations and applicable specifications established by the Association of American Railroads and other industry standards ("Industry Standards"). Licensee's obligations shall include, without limitation, monthly inspection, as well as on-going repair and maintenance of all Subject Track, rails, ties, ballast and other track materials, and road crossings where Subject Track crosses a roadway. No later than the last day of each calendar month, Licensee shall provide to LMI a copy of the monthly rail inspection for that calendar month. Licensee shall not make, nor cause or suffer to be made any repairs or other work for which a permit or other regulatory approval is required by any applicable building code, standard, or regulation, including, without limitation, the City Building Code, or of any rule or regulation without first obtaining all necessary permits and approvals, as well as LMI's prior written consent. Licensee hereby waives all rights to make repairs at LMI's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect, to the extent applicable.

(b) Responsibility over Structures and Equipment. Licensee shall be responsible, at its sole cost and expense, for inspection, maintenance and repair of all control systems signals, gates and fences and for inspection, maintenance and repair of all structures and equipment on and over the Subject Track. LMI shall not be obligated to make any inspections, repairs, replacement or renewals of any kind, nature or description whatsoever to the Subject Track or the License Area.

(c) Routine Maintenance. Licensee, at its sole cost and expense, shall provide all initial start-up and all routine repairs and day-to-day maintenance of the Subject Track including, without limitation, adjustment of ballast and proper gauge distance, replacement of rail bolts, switches, oiling of switches, crossing guards and vegetation control, replacement of track sections, ties, cross ties and sleepers, if needed. To the extent the 'Railroad Track Inspection Report' points out any deficiencies, Licensee shall perform all work to correct the deficiencies listed in as routine maintenance in a timely manner and no later than [_____, 20__].

(d) LMI's Right to Inspect. LMI and its authorized agents shall have the right without notice at any time to inspect the Subject Track and to determine whether Licensee is complying with its obligations under this Agreement. In the event that damage or deterioration to Subject Track results in the same not meeting the standard of maintenance required by LMI or Industry Standards, then Licensee shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Subject Track and complete the same with due diligence. LMI's right of inspection shall not relieve Licensee of its independent responsibility to maintain Subject Track in a condition as good as, or better than, its condition on the commencement date of this Agreement, excepting ordinary wear and tear. LMI shall not be liable in any manner, and Licensee hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of LMI's inspection of Subject Track, or entry by the public (as Licensee has a non-exclusive right to use the Subject Track) onto the Subject Track.

(e) LMI's Right to Repair. In the event (i) Licensee fails to inspect or to perform routine maintenance in accordance with this Agreement, Licensee, its agents or invitees cause

any damage to the Subject Track or adjacent areas; or (iii) Licensee fails to promptly repair any damage to the Subject Track or adjacent areas caused by Licensee or its agents, LMI may perform the same at Licensee's sole cost and expense and Licensee shall immediately reimburse LMI therefore.

8. Control of and Changes to Common Area. LMI shall have the sole and exclusive control of the Common Area, as well as the right to make changes to the Common Area in LMI's sole and absolute discretion. The Term "Common Area", as used in this Agreement means all areas of the Project (exclusive of the leased buildings located within the Project) which areas are now or later made available for the general use of LMI, Licensee and other persons entitled to occupy the Project and their customers, including, without limitation, the parking facilities specifically designated as such by LMI, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, and similar areas and facilities situated with the Project which are not reserved for the exclusive use of any Project occupants, as LMI may change from time to time. Provided LMI does not materially interfere with Licensee's use of and access to the License Area, LMI shall have the right, but not the obligation, to (among other things): (a) restrain the use of the Common Area by unauthorized persons; (b) cause Licensee to remove or restrain persons from any unauthorized use of the Common Area if they are using the Common Area by reason of Licensee's presence in the Project; (c) utilize from time to time any portion of the Common Area for promotional, entertainment, and related matters; (d) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage non-customer use, to prevent public dedication or an easement by prescription from arising, or for any other reason deemed appropriate in LMI's judgment; and (e) reasonably change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area, including, without limitation, buildings, lighting, parking areas, landscaped areas, roadways, walkways, drive aisles and curb cuts.

9. Project Planning. Intentionally deleted.

10. Access to License Area. Licensee acknowledges that this Agreement is for the non-exclusive use of the License Area, subject to all easements and rights of way for the location of any type of facility over, across, in and upon the License Area or any portion thereof which exist on the Reference Date, as well as any future easements and use agreements granted by LMI.

(a) No Interference; Priority of Cleanup. Licensee acknowledges that, pursuant to the terms of those certain existing or future agreements related to the environmental cleanup of Mare Island (which may be hereunder modified and/or revised without notice to Licensee), including, but not limited to, the Environmental Services Cooperative Agreement between the United States of America Department of the Navy, and the City of Vallejo ("ESCA") and that certain Mare Island Remediation Agreement between the City of Vallejo and Lennar Mare Island, LLC ("MIRA"), the Consent Agreement, the Consent Agreement and Final Order Between the United States Environmental Protection Agency, the United States Department of the Navy, the City of Vallejo and LMI dated as of December 20, 2001 (the "CA/FO"), and Order No. 00-132 issued by the California Regional Water Quality Control Board, San Francisco Bay Region dated as of November 29, 2000 (the "RWQCB Order"), LMI and/or environmental contractors will be investigating and remediating environmental contamination at the Project, the land associated with the License Area and the License Area. Licensee shall not conduct operations on or make

any alterations to the License Area that would interfere with or otherwise restrict operations, environmental clean-up or restoration actions by the United States Government, the United States Navy, the Environmental Protection Agency ("EPA"), state environmental regulators, LMI or contractors thereof. Environmental clean-up, restoration or testing activities by these parties shall take priority over Licensee's use of the License Area in the event of any conflict. This Agreement and the terms and provisions contained herein shall be subject and subordinate at all times to the remediation relocation agreement and orders described in this Section 10, as the same may be modified or amended from time to time during the Term.

11. Condition of the License Area.

(a) Without limiting the provisions of Section 7 above, Licensee shall perform an initial investigation of all of the License Area, including without limitation, the Subject Track prior to the execution of this Agreement in order to confirm that it is familiar with the License Area and that the License Area is suitable for its intended use. Licensee shall accept the License Area in its current "as-is/where-is" condition without warranty of any kind. Licensee acknowledges that, except as otherwise expressly set forth in this Agreement, neither LMI nor any agent of LMI has made any representation or warranty with respect to the License Area, or the Project or their condition, or with respect to the suitability thereof for the conduct of Licensee's business. The taking of possession of the License Area by Licensee shall conclusively establish that the Project, the License Area, including, without limitation, the Subject Track, was at such time in good, workable, and satisfactory condition and repair, without any obligation on LMI's part to perform any maintenance, repair, alterations, upgrades or improvements thereto.

(b) Licensee acknowledges that it has been informed of Hazardous Materials and other dangerous conditions on or about the Project and the License Area, and that Licensee has been given the opportunity to investigate the License Area and the location of Hazardous Materials thereon. Further, Licensee acknowledges that it has received the "**Mare Island Warning**" attached to this Agreement as Exhibit C and that Licensee shall display the Mare Island Warning in a prominent location on the License Area so that it may be readily viewed by Licensee's employees, invitees and licensees. Licensee agrees to be bound by, and to distribute the same to its employees, agents, visitors, invitees, contractors and subcontractors. Complete information regarding the same is available at the offices of LMI at Mare Island and Licensee is encouraged to review such information.

(c) Licensee shall comply with all terms of the Consent Agreement among Lennar Mare Island, the City of Vallejo and the Department of Toxic Substances Control ("Consent Agreement"), the ESCA and the MIRA, as each such agreement may be amended from time to time, copies of which are available for inspection and copying at LMI's address. Licensee agrees that should any conflict arise between the terms of the Consent Agreement, the ESCA or the MIRA as they presently exist or may be amended, and the provisions of this Agreement, the terms of the Consent Agreement, the ESCA and the MIRA shall control. Licensee further agrees that notwithstanding any other provision of this Agreement, LMI shall assume no liability to Licensee or its licensees should implementation of the Consent Agreement, the ESCA or the MIRA interfere with Licensee's or any such licensee's use of the License Area.

(d) The License Area are subject to certain land use covenants required by the California Department of Toxic Substances Control (“DTSC”), including, without limitation, the Pre-Decision Covenant to Restrict Use of Property, the Soil and Groundwater Management Plan, and the Soil Control Plan, a copy of each of which is on file in the offices of LMI at Mare Island and available for Licensee’s review. These covenants prohibit excavation or other disturbance of the surface of the land without the consent of DTSC, and Licensee agrees that it will comply with these land use covenants and will not excavate soil or otherwise disturb the land or the groundwater underneath the surface of the land without the written consent of DTSC and LMI.

12. Alteration. No modifications, alterations, or additions shall be made to the License Area or any portion thereof without LMI’s prior written approval, which approval LMI may withhold in its sole and absolute discretion. LMI’s consent may be conditioned upon, among other things, review and approval of drawings and specifications, receipt of reasonable evidence of contractors’ ability and insurance, and completion bonds satisfactory to LMI. Licensee shall be required to repair any damage occurring to the License Area during the Term caused by Licensee or its agents, contractors, employees, invitees, licensees, Licensees or assigns and, at LMI’s option, fully restore the License Area, within ten (10) days following expiration or termination of this Agreement, to their condition immediately prior to the Term.

13. Insurance. Licensee shall, during the Term, at its sole cost and expense, obtain and keep in force and effect the following insurance coverages:

(a) Property Insurance. “Special Form Causes of Loss” property insurance (commonly referred to as special perils coverage) in an amount equal to the full replacement cost of, Licensee’s personal property and all of Licensee’s alterations, stock in trade, trade fixtures, equipment and machinery and other personal property located on the License Area.

(b) Liability Insurance. Comprehensive general liability insurance with limits of \$5,000,000 per occurrence. The policy shall name LMI and its property manager and their respective officers, directors, members, employees and agents as additional insureds. Coverage must include an additional insured endorsement in favor of, and naming, LMI and its property manager and their respective officers, directors, members, employees and agents.

(c) [Railroad Protective Liability. Railroad Protective Liability Insurance in an amount not less than \$5,000,000 per occurrence.]

(d) Pollution Liability Insurance. Pollution Liability Insurance coverage in an amount not less than \$5,000,000 per occurrence. **[Detailed coverage requirements to be specified by LMI risk management team.]**

(e) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance covering all owned, hired, and non-owned automobiles of Licensee in an amount not less than \$1,000,000.

(f) Workers’ Compensation Insurance. Workers’ compensation insurance in compliance with California law, and employer’s liability insurance in an amount not less than \$1,000,000. Coverage must include a waiver of subrogation endorsement in favor of, and

naming, LMI and its property manager and their respective officers, directors, members, employees and agents.

(g) Policies and Carriers. A certificate(s) evidencing all required insurance on Accord Form 27 or its equivalent must be delivered to LMI upon Licensee's execution of this Agreement. All insurance required hereunder shall be (1) with insurance carriers and pursuant to policies which are reasonably acceptable to LMI; (2) name Licensee as named insured thereunder and shall name LMI, its mortgagees and, at LMI's request, such other persons or entities of which Licensee has been informed in writing, as additional insureds thereunder, all as their respective interests may appear; (3) shall not have a deductible amount exceeding Five Thousand Dollars (\$5,000.00), which deductible amount shall be deemed self-insured with full waiver of subrogation; (4) specifically provide that the insurance afforded by such policy for the benefit of LMI and any other additional insureds shall be primary, and any insurance carried by LMI or any other additional insureds shall be excess and non-contributing; (5) contain an endorsement that the insurer waives its right to subrogation as described in Sections 18 and 19; and (6) require the insurer to notify LMI (and any other additional insureds) in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof.

14. Licensee's Default.

(a) The following events shall be deemed to be events of default by Licensee under this Agreement: (1) the vacation or abandonment of the License Area by Licensee prior to the expiration of the Term; (2) the failure by Licensee to make when due any payment required to be made by Licensee hereunder; (3) the failure by Licensee to observe or perform any of the provisions of this Agreement to be observed or performed by Licensee where such failure continues for ten (10) days after written notice thereof from LMI to Licensee; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161; (4) (a) the making by Licensee of any general assignment for the benefit of creditors, (b) the filing by or against Licensee of a petition to have Licensee adjudged as bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Licensee, the same is dismissed within sixty (60) days), (c) the appointment of a trustee or receiver to take possession of substantially all of Licensee's assets located at the License Area or of Licensee's interest in this Agreement, where possession is not restored to Licensee within sixty (60) days, or (d) the attachment, execution or other judicial seizure of substantially all of Licensee's assets located at the License Area or of Licensee's interest in this Agreement where such seizure is not discharged within sixty (60) days.

On the occurrence of an event of default by Licensee, in addition to any other remedies available to LMI under this Agreement, at law or in equity, LMI shall have the immediate option to terminate this Agreement and all rights of Licensee hereunder. If LMI elects to so terminate this Agreement, the entire License Fee owing for the remainder of the Term shall be immediately due and payable.

(b) In addition, if Licensee fails to perform Licensee's obligations to repair or maintain the License Area, then LMI shall have the option to enter upon the License Area after

ten (10) days' prior written notice to Licensee, or in the case of an emergency immediately without prior notice, to perform such obligations on Licensee's behalf necessary to return the License Area to good order, condition and repair. The costs incurred by LMI pursuant thereto shall become due and payable to LMI, upon demand, together with a fee of ten percent (10%) of the costs of such work for LMI's managing agent.

15. Surrender; Holding Over. Licensee shall surrender exclusive possession of the License Area to LMI immediately upon the expiration or other termination of this Agreement in good condition and repair (reasonable wear and tear excepted). During the period of any such holding over, all other provisions of this Agreement shall remain in effect except that the monthly License Fee shall be equal to Ten Thousand Dollars (\$10,000.00) per month. If Licensee fails to surrender the License Area upon the termination or expiration of this Agreement, in addition to any other liabilities to LMI accruing therefrom, Licensee shall defend, indemnify and hold LMI harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any Licensee or other person founded upon such failure to surrender. The foregoing indemnity shall survive the expiration or earlier termination of the Agreement.

16. No Disposal of Waste at Project; Hazardous Materials. Licensee shall provide not less than ten (10) business days' advance written notice to LMI if Licensee intends to transport Hazardous Materials within the License Area, and LMI shall consent or reject such plan within ten (10) business days after receipt of each such request. Except if expressly agreed to by LMI in writing, Licensee agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, treated, released or disposed of on, in, under or about the License Area or any other portion of Mare Island by Licensee, its customers and clients, agents, employees, sublicensees, assignees, contractors or invitees. In no event shall Licensee dispose of any Hazardous Materials or any other waste or debris at the Project. Notwithstanding the foregoing, Licensee agrees to promptly notify LMI of any release of Hazardous Materials in or on the License Area, or any other portion of Mare Island of which Licensee becomes aware of during the Term, whether caused by Licensee or any other persons or entities. In the event of any release of Hazardous Materials caused or permitted by Licensee, LMI shall have the right, but not the obligation, to cause Licensee to immediately take all steps LMI deems necessary or appropriate to remediate such release and prevent any future release to the satisfaction of LMI and LMI's mortgagee(s). As used herein, "**Hazardous Materials**" means any hazardous or toxic materials, substances or wastes as now or hereafter designated under any law, statute, ordinance, rule, regulation, order or ruling of any agency of California, the United States Government or any local governmental authority, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), and freon and other chlorofluorocarbons. Licensee shall comply with hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent and any other applicable laws, rules or regulations. Licensee shall comply with all applicable laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, and permits relating in any manner to the License Area, including, but not limited to, matters pertaining to (a) industrial hygiene, (b) environmental conditions on, in, under or about the License Area, including soil and groundwater conditions created by Licensee, and (c) Licensee's use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, recycling,

treatment, disposal or release of any Hazardous Materials now in effect or which may hereafter come into effect.

17. Licensee's Indemnification of LMI. To the fullest extent permitted by law, Licensee shall be liable for, and shall indemnify, defend (with counsel reasonably satisfactory to LMI), protect and hold LMI and LMI's members, partners, officers, directors, shareholders, employees, agents, successors and assigns (collectively, "**LMI Indemnified Parties**") harmless from and against, any and all actions, claims, damages, judgments, proceedings, suits, causes of action, losses, liabilities and expenses, including attorneys' fees and court costs (collectively, "**Indemnified Claims**"), arising or resulting from: (a) any accident, injury to or death of any person, or loss or damage to or destruction of any property occurring within the License Area as a result of Licensee's use of the License Area or operations at the Project, except to the extent caused by the gross negligence or willful misconduct of LMI or its agents; (b) any act or omission of Licensee or any of Licensee's customers, clients, agents, employees, contractors, subtenants, assignees, sublicensees or with respect to acts or omissions within the License Area only, Licensee's invitees (collectively, "**Licensee Parties**"); (c) the use of the License Area by Licensee or any Licensee Parties and conduct of Licensee's business by Licensee or any Licensee Parties, or any other activity, work or thing done, permitted or suffered by Licensee or any Licensee Parties, in or about the License Area or elsewhere in the Project; and/or (d) any default by Licensee of any obligations on Licensee's part to be performed under the terms of this Agreement or the terms of any contract or agreement to which Licensee is a party or by which it is bound, affecting this Agreement or the License Area. The foregoing indemnification shall include, but not be limited to, any injury to, or death of, any person, or any loss of, or damage to, any property on the License Area, or on immediately adjacent sidewalks, streets or ways, or connected with the use, condition or occupancy thereof, whether or not LMI or its mortgagee has or should have knowledge or notice of the defect or conditions causing or contributing to such injury, death, loss or damage. In case any action or proceeding is brought against LMI or any LMI Indemnified Parties by reason of any such Indemnified Claims, Licensee, upon notice from LMI, shall defend the same at Licensee's expense by counsel approved in writing by LMI, which approval shall not be unreasonably withheld.

18. Licensee's Assumption of Risk and Waiver. Subject to the terms of Section 29 and except to the extent such matter is not covered by the insurance required to be maintained by Licensee under this Agreement and such matter is attributable to the gross negligence or willful misconduct of LMI, LMI shall not be liable to Licensee, Licensee's employees, agents or invitees for: (i) any damage to property of Licensee, or of others, located in, on or about the License Area, nor for (ii) the loss of or damage to any property of Licensee or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from or to any part of the License Area or from the pipes, appliance of plumbing works or from any roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, or (iv) any such damage caused by other persons in the License Area, occupants of adjacent property of the Project, or the public, or caused by operations in construction of any private, public or quasi-public work. LMI shall in no event be liable to Licensee for any consequential damages or for loss of revenue or income and Licensee waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section 17, neither Licensee nor its agents, employees and invitees shall keep or store any property within the License Area except

as provided in Section 5(a) above, and any property so stored, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of Licensee and Licensee shall defend (with counsel reasonably satisfactory to LMI) and hold LMI harmless from any claims arising out of damage to the same, including subrogation claims by Licensee's insurance carriers, unless such damage shall be caused by the gross negligence or willful misconduct of LMI. LMI or its agents shall not be liable for interference with light, view or any other intangible rights.

19. Waivers of Subrogation. Both LMI and Licensee hereby waive all right of recovery against the other party, the other party's partners, officers, directors, agents, representatives, employees, successors and assigns with respect to any loss or damage, including consequential loss or damage, to the waiving party's property caused or occasioned by any peril or perils (including negligent acts) covered by any policy or policies of property insurance carried by the waiving party or that is required to be insured under Section 12 (but not commercial general liability insurance). Each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party.

20. Compliance With Law. Licensee shall at all times comply at its expense with all applicable law pertaining to the License Area and Licensee's operations thereon.

21. Subordination. Licensee agrees that this Agreement and all rights of Licensee hereunder are and shall be subject and subordinate to any ground or underlying lease which may now or hereafter be in effect regarding the License Area, to any mortgage now or hereafter encumbering the License Area, to all advances made or hereafter to be made upon the security of such mortgage, to all amendments, modifications, renewals, consolidations, extensions, and restatements of such mortgage, and to any replacements and substitutions for such mortgage. The terms of this provision shall be self-operative and no further instrument of subordination shall be required. However, upon request of LMI or any lessor under such a ground lease or mortgagee under such a mortgage, Licensee shall execute within five (5) days of such request such instrument or certificates as may be reasonably required to confirm the foregoing subordination, as well as any estoppel certificate reasonably requested by LMI.

22. Brokers. Licensee represents and warrants that no broker, agent or finder (a) negotiated or was instrumental in negotiating or consummating this Agreement on its behalf, and (b) is or might be entitled to a commission or compensation in connection with this Agreement as a result of the actions of Licensee. Licensee shall indemnify, defend (by counsel reasonably approved in writing by LMI) and hold LMI harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Licensee of the foregoing representation, including, without limitation, any claims that may be asserted against LMI by any broker, agent or finder undisclosed by Licensee. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

23. Liens. Licensee shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the License Area, nor against Licensee's interest in the License Area in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Licensee or by reason of any other act or omission of Licensee or Licensee's agents, employees, contractors, licensees or invitees. Licensee shall, at LMI's request, provide

LMI with enforceable, unconditional and final lien releases (and other reasonable evidence reasonably requested by LMI to demonstrate protection from liens) from all persons furnishing labor and/or materials with respect to the License Area. LMI shall have the right at all reasonable times to post on the License Area and record any notices of non-responsibility which it deems necessary for protection from such liens under Section 3129 of the California Civil Code.

24. Damage, Destruction or Condemnation. In the event of any damage or destruction of all or any part of the License Area, LMI may elect to terminate this Agreement effective as of the date which is thirty (30) days after Licensee's receipt of LMI's election to so terminate. In case the whole of the License Area, or such part thereof as shall substantially interfere with Licensee's use and occupancy of the License Area as reasonably determined by LMI, shall be taken for any public or quasi-public purpose by any lawful authority by exercise of the right of eminent domain, or sold to prevent such taking, LMI shall have the right to terminate this Agreement effective as of the date possession is required to be surrendered to said authority. Licensee hereby waives the provisions of California Civil Code Sections 1932.2 and 1933.4 and Code of Civil Procedure Section 1265.130.

25. No Assignment. Licensee shall neither assign or transfer this Agreement, nor sublicense the License Area or any part thereof. Licensee shall not permit any other person, entity or operation to use any portion of the License Area.

26. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Agreement.

27. Entire Agreement; Attorneys' Fees. This Agreement contains the entire agreement between the parties, incorporates all previous agreements with respect to the License Area and may be amended only by a written instrument executed by both parties. In the event of a dispute or suit involving the parties arising from or relating to the License Area, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses, not limited to taxable costs, from the non-prevailing party, including in any action for collection and any action on appeal.

28. Estoppel Certificate.

(a) Licensee's Obligations. Within ten (10) business days following LMI's written request, Licensee shall execute and deliver to LMI an estoppel certificate, in a form reasonably requested by LMI, certifying: (1) the Commencement Date of this Agreement; (2) that this Agreement is unmodified and in full force and effect (or, if modified, that this Agreement is in full force and effect as modified, and stating the date and nature of such modifications); (3) the date to which the License Fee and other sums payable under this Agreement have been paid; (4) that there are not, to the best of Licensee's knowledge, any defaults under this Agreement by either LMI or Licensee, except as specified in such certificate; and (5) such other matters as are reasonably requested by LMI. Any such estoppel certificate delivered pursuant to this Section 27 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Project, as well as their assignees.

(b) Licensee's Failure to Deliver. Should Licensee fail to deliver such estoppel certificate within said ten day period, LMI shall deliver a second written request, and should Licensee fail to sign and return any requested estoppel certificate within five (5) business days after such second request, such failure shall constitute a default hereunder without the applicability of the notice and cure periods specified in Section 13 above and shall be conclusive upon Licensee that: (1) this Agreement is in full force and effect without modification, except as may be represented by LMI; (2) there are no uncured defaults in LMI's or Licensee's performance (other than Licensee's failure to deliver the estoppel certificate); (3) not more than one (1) month's License Fee has been paid in advance; and (4) all other matters set forth in the estoppel certificate are true and correct. Licensee shall indemnify, defend (with counsel reasonably approved by LMI in writing) and hold LMI harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) attributable to any failure by Licensee to timely deliver any such estoppel certificate to LMI as provided herein.

29. Transfer of LMI's Interest. The term "LMI" as used in this Agreement, so far as covenants or obligations on the part of the LMI are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Project. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of LMI contained in this Agreement arising after the date of such transfer or conveyance. LMI and LMI's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Project, the License Area and/or this Agreement without the consent of Licensee, and such transfer or subsequent transfer shall not be deemed a violation on LMI's part of any of the terms and conditions of this Agreement.

30. Limitation on LMI's Liability. Notwithstanding anything contained in this Agreement to the contrary, the obligations of LMI under this Agreement (including any actual or alleged breach or default by LMI) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of LMI or LMI's members or partners, and Licensee shall not seek recourse against the individual partners, directors, officers, members or shareholders of LMI or against LMI's members or partners or any other persons or entities having any interest in LMI, or any of their personal assets for satisfaction of any liability with respect to this Agreement. In addition, in consideration of the benefits accruing hereunder to Licensee and notwithstanding anything contained in this Agreement to the contrary, Licensee hereby covenants and agrees for itself and all of its successors and assigns that the liability of LMI for its obligations under this Agreement (including any liability as a result of any actual or alleged failure, breach or default hereunder by LMI), shall be limited solely to, and Licensee's and its successors' and assigns' sole and exclusive remedy shall be against, LMI's interest in the License Area, and no other assets of LMI.

31. Miscellaneous Provisions.

(a) Notices. Any and all notices or other communications required or permitted to be given under this Agreement, or by law, shall be in writing and either (i) personally delivered, (ii) sent by United States mail, registered or certified, or express mail, postage prepaid, return

receipt requested, (iii) sent by Federal Express or other nationally recognized overnight courier service that provides receipted delivery service, delivery charges prepaid, return receipt requested, or (iv) sent by facsimile during business hours, addressed to the address set forth below the party's signature block, or at such other address as either party may from time to time specify in writing to the other in the manner aforesaid. Notice shall be deemed to have been given upon the date of delivery (or the date of refusal to accept delivery, as the case may be). If notice is sent by facsimile, notice shall be deemed delivered upon the sender's receipt of confirmation of transmission of such facsimile notice produced by the sender's facsimile machine.

(b) Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability) (herein collectively, "Force Majeure Delays"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 34(b) shall not apply to nor operate to excuse Licensee from the payment of the License Fee or any additional payments required hereunder strictly in accordance with the terms of this Agreement.

(c) Recording. Neither LMI nor Licensee shall record this Agreement.

(d) Exhibits. All Exhibits attached to this Agreement are hereby incorporated in this Agreement as though set forth at length herein.

(e) Accord and Satisfaction. No payment by Licensee or receipt by LMI of a lesser amount than the License Fee payment herein stipulated shall be deemed to be other than on account of the License Fee, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and LMI may accept such check or payment without prejudice to LMI's right to recover the balance of such License Fee or pursue any other remedy provided in this Agreement. Licensee agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Agreement or imposed by any statute or at common law.

(f) No Partnership. LMI does not, in any way or for any purpose, become a partner of Licensee in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Licensee by reason of this Agreement.

(g) Nondisclosure of Agreement Terms. Licensee acknowledges and agrees that the terms of this Agreement are confidential and constitute proprietary information of LMI. Disclosure of the terms could adversely affect the ability of LMI to negotiate other licenses and leases and impair LMI's relationship with other licensees or tenants. Accordingly, Licensee agrees that it, and its partners, officers, directors, employees, agents and attorneys, shall not

intentionally and voluntarily disclose the terms and conditions of this Agreement to any newspaper or other publication or any other Licensee or apparent prospective Licensee of the Project, or real estate agent, either directly or indirectly, without the prior written consent of LMI.

(h) Non-Discrimination. Licensee acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, assignment, occupancy, tenure, use, or enjoyment of the License Area, or any portion thereof.

(i) Licensee's Authority. If Licensee executes this Agreement as a partnership, corporation or limited liability company, then Licensee and the persons and/or entities executing this Agreement on behalf of Licensee represent and warrant that: (1) Licensee is a duly organized and existing partnership, corporation or limited liability company, as the case may be, and is qualified to do business in the state in which the License Area are located; (2) such persons and/or entities executing this Agreement are duly authorized to execute and deliver this Agreement on Licensee's behalf in accordance with the Licensee's partnership agreement (if Licensee is a partnership), or a duly adopted resolution of Licensee's board of directors and the Licensee's by laws (if Licensee is a corporation) or with Licensee's operating agreement (if Licensee is a limited liability company); and (3) this Agreement is binding upon Licensee in accordance with its terms. Concurrently with Licensee's execution and delivery of this Agreement to LMI and/or at any time during the Term within ten (10) days of LMI's request, Licensee shall provide to LMI a copy of any documents reasonably requested by LMI evidencing such qualification, organization, existence and authorization.

(j) Joint and Several Liability. If more than one person or entity executes this Agreement as Licensee: (i) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Agreement to be kept, observed and performed by Licensee; and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Agreement shall be binding upon each and all of the persons and entities executing this Agreement as Licensee with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

(k) Safety. In addition to complying with the terms of this Agreement and all applicable laws, rules, and regulations, Licensee shall take all reasonable steps to prevent injury upon the License Area in accordance with applicable Industry Standards

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, LMI and Licensee have executed this Agreement as of the date hereof.

LMI

Lennar Mare Island LLC,
a California limited liability company

By: Lennar Homes of California, Inc.,
a California corporation,
its sole member

By: _____
Thomas Sheaff, Vice President

Date: _____

Address for Notices:

Lennar Mare Island, LLC
690 Walnut Avenue, Suite 100
Mare Island, Vallejo, CA 94592
Attention: Tom Sheaff
Facsimile: (707) 562-4002

LICENSEE

San Francisco Bay Railroad,
a _____

By: _____
David A. Gavrich
President and CEO

Date: _____

Address for Notices:

San Francisco Bay Railroad
100 Cargo Way, Pier 96 Railyard
San Francisco, CA 94124
Attention: David A. Gavrich
Facsimile: (415) 642-7174

EXHIBIT A

RULES AND REGULATIONS

1. No sign, temporary sign, banner, advertisement, name or notice shall be installed or displayed on any part of the Project or License Area, wall, glass, door, fence or in any part of the landscaping or the project without the prior written consent of LMI.
2. Licensee shall not obstruct any sidewalks, driveways, passages, exits, entrances, loading docks, or streets of the Project.
3. Licensee shall not dig soil or engage in any other subsurface disturbance activities.
4. Electric wires, telephones, burglar alarms or other similar apparatus shall not be installed in the License Area except with the approval and under the direction of LMI. The location shall be subject to the approval of LMI, and any installation or removal shall be at Licensee's own expense.
5. Licensee shall not use or permit to be used in the License Area any foul or noxious gas or substance, or permit or allow the License Area to be occupied or used in a manner offensive or objectionable to LMI or other occupants of the project by reason of noise, odors or vibrations.
6. Licensee shall not make any door-to-door solicitation of business from other Licensees in the project. Licensee shall not distribute any written material to other occupants of the project.
7. Licensee shall not install any radio or television antenna, loudspeaker, satellite dish, cellular antenna or other device within the License Area or Project. Licensee shall not interfere with radio or television broadcasting or reception from or in the License Area or Project.
8. Licensee shall repair any damage resulting from noncompliance under this rule, and Licensee shall restore the License Area upon expiration of the Agreement.
9. LMI reserves the right to exclude or expel from the License Area or the project any person who, in LMI's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the project.
10. Licensee shall store all its trash and garbage within its License Area or in designated trash containers or enclosures within the project. Licensee shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by LMI.
11. Neither the License Area nor Project shall not be used for lodging or residential purposes of any kind.
12. Licensee shall not allow nor cause any persons under the age of 18 nor any animals to be on the License Area.

13. Licensee agrees that it shall comply with all fire and security regulations that may be issued from time to time by LMI. Licensee, at its expense, shall comply with all applicable federal, state, and local occupational safety and health regulations.
14. LMI may waive any one or more of these Rules and Regulations for the benefit of Licensee or any other occupant, but no such waiver by LMI shall be construed as a waiver of any other Rule and Regulation in favor of Licensee or any other such occupant, nor prevent LMI from thereafter enforcing any of the Rules and Regulations against any and all of the occupants of the project, if applicable.
15. No fishing or hunting is permitted at the License Area or the Project at anytime.
16. LMI reserves the right to restrict access to any areas of the Project or Mare Island.
17. Licensee shall not use any portion of the License Area or any area adjacent to the License Area for storage of any type.
18. All commercial vehicles used, operated, or affiliated with Licensee, its employees, agents, visitors, invitees, contractors and subcontractors must use Railroad Avenue as their route of transit on Mare Island.
- a) These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease or license agreement affecting any portion of the Project. LMI reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the License Area or the project and for the preservation of good order therein. Licensee agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted. Licensee shall be responsible for the observance of all of the foregoing rules by Licensee's employees, agents, clients, customers, invitees or guests.

EXHIBIT B

[SEE ATTACHED]

EXHIBIT C

MARE ISLAND WARNING

**CAUTION
ENTER AT YOUR OWN RISK**

You are entering Mare Island, a former Navy Base with potentially hazardous conditions related to ongoing construction and environmental remediation activities. In addition, be advised that there are potentially dangerous areas and conditions on the Island, which you should avoid. THEREFORE, YOU MUST STRICTLY FOLLOW ALL WARNING SIGNS POSTED THROUGHOUT THE ISLAND AND INSURE THAT YOU DO NOT ENTER RESTRICTED AREAS.

By entering Mare Island, YOU ARE ASSUMING FULL RESPONSIBILITY for any risk, to yourself or any person within your control under 18 years of age, of personal injury, death, or property damage, arising from hazardous and dangerous areas and conditions resulting from operation, construction and environmental remediation activities taking place on Mare Island.

Under no circumstances are you permitted to excavate or otherwise disturb the land on Mare Island without prior written consent of the property owner and the City of Vallejo. Please feel free to call (707) 562-4000 if you have any questions.

EXHIBIT D

Temporary Railroad Operations User Acknowledgement

The undersigned Mare Island Business _____ [fill in the blank] _____, hereby acknowledges and Agrees:

San Francisco Bay Railroad ("SFBRR"), pursuant to a license agreement with Lennar Mare Island LLC ("LMI"), is authorized, on a temporary basis, to operate on a portion of Mare Island railroad track.

The redevelopment will involve extensive reconstruction and rehabilitation of buildings, roadways, public facilities and improvements, all of which will produce noise, dust and inconvenience to Licensee (e.g., road barricades). Temporary or permanent interruption of rail service to Mare Island is likely.

The temporary or permanent closure of rail service to Mare Island shall not constitute a nuisance and shall not be a basis for abatement or reduction of the License Fee or be deemed a violation of the undersigned's right to quiet enjoyment under their agreement with LMI or any other entity. The undersigned shall not be entitled to any compensation or damages for loss of, or interference with, Licensee's business or use or access to the License Area resulting from the loss of rail service.

Advance notice of a temporary or permanent closure of rail service to Mare Island is not required.

SFBRR is fully responsible for all maintenance of the rail, switches and rail system components.

SFBRR is solely responsible for safety, liability and traffic control.

SFBRR is required to operate in compliance with all applicable laws and regulations.

The undersigned hereby acknowledges that, notwithstanding the existence of rail facilities adjacent to and/or servicing Mare Island or the project now or in the future, LMI is under no obligation whatsoever to provide any rail service in the future.

By signing below, both SFBRR and _____ [fill in the blank] _____ agree and accept the disclosure above.

San Francisco Bay Railroad

[Name of Business]

By: David A. Gavrich
Its: President & CEO

By:
Its:

Date

Date

Exhibit S

Affidavit of Service

DECLARATION OF SERVICE

I, Jacob E. Park, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that on this 12th day of March, 2010 I sent a true copy of the attached Petition for a Declaratory Order and for Expedited Relief by Federal Express to:

Mr. Tom Sheaff
Lennar Mare Island, LLC
690 Walnut Avenue, Suite 100
Mare Island
Vallejo, California 94592

Mr. Craig Whittom
Assistant City Manager
City of Vallejo
555 Santa Clara St.
Vallejo, California, 94590

Mr. Don Seil, General Manager
California Northern Railroad Company
1801 Hanover Dr, Suite D
Davis, CA 95616



Jacob E. Park, Server

3-13-2010
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Company CALIFORNIA NORTHERN RAILROAD CO.

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City DAVIS State CA ZIP 95616

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96 ☐ No ☐ Yes ☐ No ☐ Yes

97 ☐ No ☐ Yes ☐ No ☐ Yes

98 ☐ No <

Exhibit T

LMI Letters to Jeffco/ABC, Cooper Crane and CS Marine



February 25, 2010

Mr. Casey Stockon
CS Marine
425 15th St
Vallejo, CA 94592

Re: Mare Island Rail Service

Dear Mr. Stockon:

The purpose of this letter is to update you on LMI's ongoing efforts to restore rail service to Mare Island.

Background

By way of background, in 2008, after 7 years of LMI's financial subsidy of switching operations on Mare Island and attempts to resolve numerous issues, rail operations ceased for lack of a long term solution and responsible party.

Since then, LMI has been working with the City of Vallejo to find a rail solution that is financially feasible for all parties, economically sustainable and compatible with the long term plans for the Island as defined in the Mare Island Specific Plan.

Rail Service to Resume

As critical as it is to find a long-term solution, LMI recognizes that Mare Island businesses would benefit from access to the rail today. To that end, LMI is pleased to inform you that it has hired Mare Island Rail Service (MIRS) to provide contract switching service on Mare Island beginning immediately. I have asked Mr. Peterson of MIRS to contact you as MIRS is ready to provide switching service for railcars moving to/from your facilities. If you have any questions related to this service, do not hesitate to contact Mr. Peterson on his cell phone at 509-554-0503.

Ongoing Challenges

Despite this recent and important milestone, we continue to face challenges in our effort to restore full service. At the moment, MIRS does not have the right to operate east of Mare Island on City-owned trackage. We have asked the City to consider allowing MIRS either to operate to a connection with California Northern, or to connect at the Causeway with San Francisco Bay Railroad (unfortunately, SFBRR has thus far not responded to requests to make arrangements for such a connection).

From LMI's perspective, SFBRR does not share the same long term interests as LMI or, in our view, many stakeholders on Mare Island. After several communications and meetings, it was apparent that SFBRR's goals were not aligned with the community based development plans, and several of their requirements were inconsistent with existing agreements. SFBRR has tried to force its way onto Mare

LENNAR MARE ISLAND

690 Walnut Avenue, Suite 100 Mare Island, Vallejo, California 94592
707.562.4000 Phone 707.562.4002 Fax



Mr. Casey Stockon
February 25, 2010
Page 2

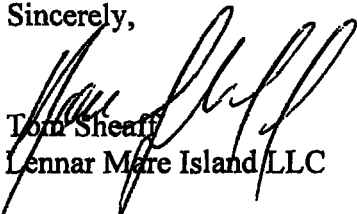
Island without taking the steps necessary to obtain needed contract rights or make its proposed operations compatible with the Specific Plan. As SFBRR has acknowledged, it has no agreement with LMI or any other rights that allow it to use the trackage on Mare Island. SFBRR filed its "Notice of exemption" at the Surface Transportation Board (the "STB") last September without having discussed with LMI whether LMI would be willing to give SFBRR access to LMI-owned trackage on the Island. That filing did not acknowledge LMI's ownership of the trackage on Mare Island, and SFBRR has steadfastly refused to withdraw or correct the Notice.

Mr. Gavrich of SFBRR has repeatedly mischaracterized what it means for the STB to have issued an exemption to SFBRR by stating that SFBRR has the "obligation" to provide service on Mare Island. LMI has been advised by its experts that SFBRR has neither the right nor the "obligation" to serve customers on Mare Island. That exemption did not make SFBRR a "common carrier" with respect to Mare Island trackage. We understand that neither SFBRR's stated desire to become a "common carrier" on Mare Island trackage, nor the STB's grant of authority to become one, makes it so unless and until SFBRR obtains the necessary contractual rights to operate on the Island and actually commences such operations. Instead SFBRR's exemption from the STB merely authorized SFBRR to operate on Mare Island if, and only if, it could obtain from LMI an agreement giving it access to Mare Island trackage. SFBRR is asserting a non-existent "obligation" to provide service on Mare Island as a basis for overriding the interests of LMI and other stakeholders who are seeking to carry out the redevelopment of Mare Island.

Finally, LMI has no plans to "put up a tollgate" on Mare Island. To the contrary, we believe our past subsidy of the rail and ongoing good faith efforts to restore service demonstrate our commitment to keeping your transportation costs as competitive as possible.

If you have any questions, or if you would like any of these issues clarified, please do not hesitate to contact me. Thank you for your business and your support of Mare Island.

Sincerely,



Tom Sheaff
Lennar Mare Island LLC

cc: Randy Peterson, Mare Island Rail Service
Craig Whittom, City of Vallejo
Gil Hollingsworth, City of Vallejo
David Kruschwitz, Surface Transportation Board
David Gavrich, SFBRR

LENNAR MARE ISLAND

690 Walnut Avenue, Suite 100 Mare Island, Vallejo, California 94592
707.562.4000 Phone 707.562.4002 Fax



February 25, 2010

Mr. Greg Jeffress
Jeffco / ABC
1260 Railroad Avenue
Vallejo, CA 94592

Re: Mare Island Rail Service

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From LMI's perspective, SFBRR does not share the same long term interests as LMI or, in our view, many stakeholders on Mare Island. After several communications and meetings, it was apparent that SFBRR's goals were not aligned with the community based development plans, and several of their requirements were inconsistent with existing agreements. SFBRR has tried to force its way onto Mare

LENNAR MARE ISLAND

690 Walnut Avenue, Suite 100 Mare Island, Vallejo, California 94592
707.562.4000 Phone 707.562.4002 Fax



February 25, 2010

Mr. Russ Barnes
Cooper Crane
1175 Nimitz Avenue
Vallejo, CA 94592

Re: Mare Island Rail Service

Dear Russ:

The purpose of this letter is to update you on LMI's ongoing efforts to restore rail service to Mare Island.

Background

By way of background, in 2008, after 7 years of LMI's financial subsidy of switching operations on Mare Island and attempts to resolve numerous issues, rail operations ceased for lack of a long term solution and responsible party.

Since then, LMI has been working with the City of Vallejo to find a rail solution that is financially feasible for all parties, economically sustainable and compatible with the long term plans for the Island as defined in the Mare Island Specific Plan.

Rail Service to Resume

As critical as it is to find a long-term solution, LMI recognizes that Mare Island businesses would benefit from access to the rail today. To that end, LMI is pleased to inform you that it has hired Mare Island Rail Service (MIRS) to provide contract switching service on Mare Island beginning immediately. I understand that Mr. Peterson has already been in contact with you. If you have any questions related to this service, do not hesitate to contact Mr. Peterson on his cell phone at 509-554-0503.

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